

Circuit Court for Baltimore County  
Case No.: C-03-CV-19-004430

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 1831

September Term, 2022

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IN THE MATTER OF JOHN GALBREATH

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Wells, C.J.  
Friedman,  
Kenney, James A., III,  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Wells, C.J.

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Filed: November 16, 2023

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This is an appeal from an action for judicial review of an administrative agency decision. John Galbreath, appellant, filed a complaint with the Maryland Insurance Administration<sup>1</sup> (“MIA”) against Nationwide Affinity Insurance Company of America (“Nationwide”), appellee, alleging that it violated the Insurance Article and related COMAR regulations in its handling of a claim for the total loss of his vehicle following an accident with Nationwide’s insured. After the MIA issued a decision in favor of Nationwide, Galbreath requested a contested case hearing before the Office of Administrative Hearings (“OAH”). Thereafter, an administrative law judge issued a proposed decision finding that Nationwide had not violated the Insurance Article or its implementing regulations, which was affirmed by a final order of the MIA. Galbreath sought judicial review in the Circuit Court for Baltimore County. The court affirmed the MIA decision.

Galbreath raises two issues on appeal from that decision,<sup>2</sup> which we have consolidated as one:

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<sup>1</sup> Galbreath’s wife, Marie Galbreath, also was a complainant before the MIA. She did not participate in any of the proceedings below, however, and is not an appellant before this Court.

<sup>2</sup> The questions as posed by Galbreath are:

1. Did the Circuit Court err in affirming the MIA’s decision that Nationwide did not violate Insurance § 27-303(1), when Nationwide misrepresented pertinent facts related to Galbreath’s claim?
2. Did the Circuit Court err in affirming the MIA’s decision that Nationwide did not violate COMAR 31.15.12.06, when Nationwide failed to provide the explanation that the regulation specifically requires within 5 business days after Galbreath’s counteroffer?

Was the MIA’s decision in favor of Nationwide legally correct and supported by substantial evidence in the record?

For the reasons we discuss below, we affirm.

### **BACKGROUND**

On June 18, 2018, Galbreath’s daughter was driving his 1994 Honda Accord on Honeygo Boulevard in Baltimore County when she was rear-ended by a vehicle driven by Chansa Kasolo, Nationwide’s insured, and pushed forward into a third vehicle. The Honda Accord was a total loss. Kasolo was at fault and Nationwide accepted liability.

#### **A. The Insurance Claim**

On or about June 25, 2018, Nickolas Graf, a claims adjuster with Nationwide, emailed a cash settlement offer of \$2,234.24 to Galbreath. That valuation was computed based upon a market valuation obtained from CCC One, a vehicle valuation company, and included taxes and transfer fees.

That same day, Galbreath responded that he believed the valuation was too low and attached information on comparable vehicles from the National Auto Dealers Association Official Used Car Guide (“NADA”), which he argued reflected a value around \$3,000. He also provided information about the condition of the vehicle and recent repairs to it.

On June 26, 2018, Graf responded to Galbreath, erroneously stating that NADA, as well as Kelley Blue Book (“KBB”) and Edmunds, were not approved valuation entities recognized by the MIA, and their valuations could not be considered. In any event, Graf reported that he consulted KBB and Edmunds, and both valued the vehicle below the amount Nationwide offered.

Galbreath responded that same day to advise Graf that his statement about NADA was “simply false.” Galbreath made a “formal counteroffer of \$3685” based upon a midpoint between high and low valuations from NADA.

On June 27, 2018, Graf responded that “[s]ites like NADA and KBB have no oversight from the state Department of Insurance (DOI) regarding their vehicle values,” unlike CCC One. Graf explained that if Nationwide were to consider the NADA valuation, it also would “have to consider the value from similar sites like KBB and Edmunds. Both of those figures are lower than the one provided from CCC One. Based on those similar sites I don’t believe your request for a higher value is supported.”

### **B. The MIA Complaint and Investigation**

On July 26, 2018, Galbreath filed a complaint with the MIA alleging deceptive practices by Nationwide in the handling of the insurance claim. Specifically, he alleged that Graf falsely asserted that the valuation source Galbreath used was not approved by the MIA and did so with the intent to coerce him to accept Nationwide’s settlement offer. He further alleged that Nationwide violated COMAR 31.15.12.06<sup>3</sup> by not providing a written response to Galbreath’s counteroffer within five business days explaining why the valuation he provided was not more accurate than that provided by Nationwide.

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<sup>3</sup> That regulation states that if a claimant makes a counteroffer and the insurer rejects it, it “shall, within 5 business days, send to the claimant a written explanation in clear and understandable language of why the information relied on by the claimant in the counteroffer does not provide a more accurate valuation than the information relied on by the insurer in its offer.” COMAR 31.15.12.06B.

On November 2018, while Galbreath’s complaint remained pending before the MIA, Nationwide twice requested that Galbreath sign over his vehicle title to Nationwide so that payment could be issued.

The MIA investigated the complaint and, on January 9, 2019, issued a four-page determination letter finding Nationwide “did not violate Maryland insurance law in its handling of [Galbreath’s] claim.” Though the investigation determined Graf had incorrectly stated “NADA is not an approved valuation for total loss settlements,” the investigator pointed out that Nationwide had acknowledged this error and Tiffany Goslee-Neeley, a Nationwide claims manager who supervised Graf, apologized to Galbreath for the mistake.<sup>4</sup> Further, there was no evidence of a pattern or practice by Nationwide relative to those false statements.

With respect to Galbreath’s contention that Nationwide failed to comply with the regulation governing responses to counteroffers, the MIA determined Graf’s June 27, 2018 email, though continuing to erroneously state that NADA, KBB, and Edmunds were not approved valuation sources, did contain a “written explanation in clear and understandable language” of why Galbreath’s valuation was not more accurate than Nationwide’s settlement offer, consistent with COMAR 31.15.12.06B.

The MIA concluded that Nationwide’s actions in handling Galbreath’s claim did not amount to a refusal to pay amounts due and owing to him or an unfair claim settlement

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<sup>4</sup> The MIA noted that Galbreath disputed this fact.

practice. Further, its actions were not arbitrary or capricious, lacking in good faith, or otherwise in violation of the Insurance Article.

Within thirty days of that decision, Galbreath requested a hearing before an Administrative Law Judge (“ALJ”).

### **C. OAH Hearing**

The hearing went forward on June 10, 2019. Galbreath testified in his case and Nationwide called Goslee-Neeley in its case.

Galbreath testified to the above stated facts. He stated that “the implication” of Graf’s misstatements to him were “as clear as the nose on anyone’s face, that intent here was to try to persuade us that our valuation information was no good, and Nationwide’s valuation information was officially approved.” He took the position that Nationwide was engaged in a pattern of misrepresentations but acknowledged that he had no evidence of Nationwide having made similar misrepresentations outside of his personal experience.

Galbreath also detailed a telephone conversation he had with Goslee-Neeley after he filed his MIA complaint. He claimed that in that conversation, Goslee-Neeley was “intransigent” and continued to take the position that NADA, as well as KBB and Edmunds, were not approved sources of valuation that Nationwide could consider despite being confronted with a COMAR regulation that stated the opposite.<sup>5</sup>

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<sup>5</sup> COMAR 31.15.12.06A. permits a claimant to reject a cash settlement offer from an insurer and make a counteroffer based on dealer quotes, advertisements for sale, or “[a]ny other source of valuation for a substantially similar motor vehicle.”

Goslee-Neeley testified that she is a Material Damage Total Loss Claims Manager for Nationwide and supervises eight claims’ adjusters, including Graf. Graf was assigned to handle the Galbreath’s settlement claim after it was determined to be a total loss. She identified the Claims Log and explained the actions taken in Galbreath’s case.

Goslee-Neeley learned about the erroneous information Graf supplied to Galbreath after Galbreath filed his MIA complaint. She counseled Graf and other claims adjusters about the mistake, explaining that though Nationwide does not rely upon NADA, KBB, or Edmunds in valuing total losses, claimants may rely on those sources. She also asked Graf to contact CCC One to obtain dealer quotes for the vehicle, which was her practice whenever there was a “value dispute” with a claimant. Those quotes came back lower than the CCC One valuation that was the basis for Nationwide’s original settlement offer.

Goslee-Neeley testified that she spoke with Galbreath by telephone on August 2, 2018. She apologized for the incorrect information Graf provided and stated that the NADA valuation could be considered. She attempted to review the valuation report with him, but he was not open to that discussion.

#### **D. The ALJ’s Proposed Decision and the Final Order of the MIA**

On July 10, 2019, the ALJ issued a proposed decision. He framed the overarching issue as whether Nationwide “engaged in any unfair claim settlement practices” and listed four sub-issues, including, as pertinent, (1) whether Nationwide “misrepresent[ed] pertinent facts or policy provisions that relate to the claim or coverage at issue” and (2) whether Nationwide “fail[ed] to provide promptly on request a reasonable explanation of the basis for its refusal to pay a claim in the amount requested by the [Galbreaths]?”

The ALJ made 21 proposed findings of fact, including:

13. Mr. Graf’s statement that the MIA does not approve NADA, [KBB], or Edmunds for the valuation of a total loss was incorrect.

14. The MIA’s “A Consumer Guide to Auto Insurance” [specifically references NADA as a valuation source].

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18. On July 31, 2018, Ms. Goslee-Neeley spoke . . . to Mr. Graf concerning his misstatements as to the MIA’s position concerning NADA guides.

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20. On August 2, 2018, Ms. Goslee-Neeley spoke with [Mr. Galbreath], “apologized for Mr. Graf’s mistake as to the MIA’s position concerning NADA guides, and explained [Nationwide]’s reliance on CCC One valuations.

The ALJ concluded that Nationwide complied with the claim settlement regulations by “making a timely cash settlement offer” based upon the valuation computed by CCC One and by timely responding to and rejecting Galbreath’s counteroffer, with an explanation of “its rationale for why it believed the CCC One valuation provided a more accurate valuation of [the vehicle].” Though Graf “twice misstated the MIA’s position concerning NADA valuations,” he also explained the basis for the CCC One valuation, which was higher than those KBB or Edmunds provided. The ALJ concluded that “[a] fair reading” of Graf’s response to Galbreath’s counteroffer is that Nationwide believed the NADA valuation “overstate[d] the fair market value of . . . the vehicle at the time of the accident.” The rejection of the counteroffer was “simply a fair business judgment

concerning the valuation of a twenty-four-year-old vehicle,” and there was no “basis for any regulatory action concerning [Nationwide]’s valuation of the[] total loss.”

On the issue of Graf’s misstatements to Galbreath concerning the NADA valuation, the ALJ found that there was no evidence to suggest the misstatement was intentional or part of a pattern or practice by Nationwide. To the contrary, the ALJ reasoned that the misstatement was an “honest mistake that ultimately did not affect [Nationwide]’s offer to [Galbreath].” The ALJ concluded that “[n]o rational, intellectually-honest person would read into Graf’s misstatements any misconduct rising to the level of an unfair claims practice.” Further, the ALJ credited Goslee-Neeley’s testimony that she counseled Graf about his misstatement and used it as a “teaching moment” for other staff members, and that she apologized to Galbreath for the error during their August 2, 2018 telephone conversation. The ALJ rejected Galbreath’s testimony to the contrary. For all those reasons, the ALJ proposed that the Insurance Commissioner find that Nationwide did not violate Maryland law in settling Galbreath’s claim and recommended denial of the complaint.

Neither party filed exceptions, and, on October 30, 2019, the Insurance Commissioner issued a final order adopting the ALJ’s proposed decision.

#### **E. The Petition for Judicial Review**

Galbreath filed a petition for judicial review of the MIA decision in the circuit court. Following a November 3, 2022 hearing, the circuit court upheld the agency decision and issued an order affirming the MIA’s final order in favor of Nationwide. This timely appeal followed.

## STANDARD OF REVIEW

In an appeal taken from a decision on judicial review of an administrative agency decision, “we look through the circuit court’s decision, although applying the same standards of review, and evaluate the decision of the agency.” *Piney Orchard Cmty. Ass’n v. Md. Dep’t of the Env’t*, 231 Md. App. 80, 91 (2016) (cleaned up). Our “role in reviewing an administrative agency adjudicatory decision is narrow; it is limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *Md. Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005) (quoting *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 67-69 (1999)) (internal citations and quotation marks omitted). The Supreme Court of Maryland has consistently defined substantial evidence as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Comm’r of Lab. & Indus. v. Whiting-Turner Contracting Co.*, 462 Md. 479, 490 (2019) (cleaned up). “A reviewing court should defer to the agency’s fact-finding and drawing of inferences if they are supported by the record.” *Noland*, 386 Md. at 571 (citation omitted). Though an agency’s statutory interpretation is reviewed *de novo*, “an administrative agency’s interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts.” *Halici v. City of Gaithersburg*, 180 Md. App. 238, 261 (2008) (quoting *Miller v. Comptroller of Md.*, 398 Md. 272, 281 (2007)). Nevertheless, an agency’s interpretation is not controlling if “it is plainly erroneous or inconsistent with the regulation.” *Md. Transp. Auth. v. King*, 369 Md. 274, 288-89 (2002) (citation omitted).

## DISCUSSION

### A. Parties' Contentions

Galbreath contends that the MIA legally erred in two respects. *First*, it erred as a matter of law by ruling that Nationwide did not misrepresent pertinent facts related to his claim based upon Graf's two misstatements to Galbreath about the use of NADA as a valuation source. He argues that the misstatements are false and misleading on their face but maintains that Nationwide's attempt to persuade him to sign over the title to his vehicle while his MIA complaint remained pending is further evidence of its intent to mislead him, as was Goslee-Neeley's continued misstatements in her telephone call with him. *Second*, Galbreath contends that the MIA erred by ruling that Graf's June 27, 2018 email in response to Galbreath's formal counteroffer complied with COMAR 31.15.12.06B.

Nationwide responds that the MIA did not err by ruling that Graf's misstatements to Galbreath did not rise to the level of an actionable misrepresentation of facts or in determining that Graf's response to Galbreath's counteroffer complied with COMAR 31.15.12.06B. Because those ruling were supported by substantial evidence and not erroneous as a matter of law, it urges us to affirm.

### B. Governing Law

Title 27, Subtitle 3 of the Insurance Article governs unfair claim settlement practices and provides "an additional administrative remedy to a claimant for a violation" of the subtitle or related regulations. Md. Code, Ins. § 27-301(a). Among other things, it is an unfair claim settlement practice for an insurer to "misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue[.]" Ins. § 27-303(1). The Insurance

Commissioner may impose a penalty of up to \$2,500 for each violation of Ins. § 27-303, order an insurer to make restitution to a claimant who suffered actual economic damage as a result of a violation, and order it to pay attorneys’ fees. Ins. § 27-305.

The legislature directed the Insurance Commissioner to promulgate regulations establishing standards and procedures governing the settlement of claims for the total loss of a private passenger vehicle and the determination of the total loss value. Ins. § 27-304.1. Those regulations appear at COMAR 31.15.12.

Galbreath was a third-party claimant because he is not Nationwide’s insured. COMAR 31.15.12.02B(8). Consequently, Nationwide was obligated to “make an offer of a cash settlement” to him “[w]ithin 10 days” after it determined that the Honda Accord was a total loss. COMAR 31.15.12.03D. The minimum offer was required to reflect either 1) the “retail value for a substantially similar motor vehicle from a nationally recognized valuation manual or from a computerized data base that produces statistically valid fair market values for a substantially similar vehicle as defined in [COMAR 31.15.12.02B(7) of this regulation” or 2) “[a] quotation for a substantially similar motor vehicle obtained by or on behalf of the insurer from a qualified dealer at a location reasonably convenient to the claimant[.]” COMAR 31.15.12.04. Either offer must also include “taxes and transfer fees[.]” *Id.*

A claimant may accept the offer or “reject the offer [in writing] and make a counteroffer based on (a) Dealer quotations for a substantially similar motor vehicle; (b) Advertisements for a substantially similar motor vehicle; or (c) Any other source of valuation for a substantially similar motor vehicle.” COMAR 31.15.12.06A. If the claimant

makes a counteroffer and the insurer rejects it, the insurer “shall, within 5 business days, send to the claimant a written explanation in clear and understandable language of why the information relied on by the claimant in the counteroffer does not provide a more accurate valuation than the information relied on by the insurer in its offer.” COMAR 31.15.12.06B.

### **C. Analysis**

We hold that the MIA did not err by ruling that Nationwide did not engage in an unfair claims settlement practice in the settlement of Galbreath’s claim. As set out above, Ins. § 27-303(1) specifies that an insurer may not “misrepresent pertinent facts” that relate to a claim. There is no dispute that Graf twice *misstated* to Galbreath that NADA was not a recognized valuation source in Maryland. First, on June 26, 2018, he stated that “Sites like NADA, [KBB] and Edmunds are not approved by your states [sic] Department of Insurance to compile values in the event of a total loss. As such, I am not able to consider that as evidence to support a higher value for your vehicle.” Second, on June 27, 2018, in response to Galbreath’s email of a formal counteroffer, Graf stated that “Sites like NADA and KBB have no oversight from the state Department of Insurance (DOI) regarding their vehicle values like the company we work w[ith], CCC One, does. CCC One has DOI approved methodology for valuing vehicles and is audited by the state to ensure accuracy.”

Contrary to Galbreath’s argument, the fact that a misstatement was made is not the end of the inquiry. The MIA adopted the ALJ’s finding that Graf made “an honest mistake.” This finding was supported by substantial evidence in the record. Goslee-Neeley testified that after she learned of Galbreath’s MIA complaint, she reviewed the correspondence, learned of Graf’s misstatements, and used it as a teaching moment with the team of claims

adjusters that she managed. She counseled them that Nationwide chooses to use CCC One for valuations because it provides a more localized valuation, but that national sites like NADA, KBB, and Edmunds are acceptable sources of valuation that a claimant may use. She was unaware of this mistake ever having been made before or since. The ALJ found Goslee-Neeley credible. From this evidence, the MIA could conclude that Graf's statements to Galbreath were wrong, but not intentionally misleading.

The MIA further determined that Graf's mistake was not "misconduct rising to the level of an unfair claims practice." As explained, the MIA's interpretation of Ins. § 27-303, a statute it administers, is entitled to deference unless it is plainly erroneous or inconsistent with the regulation. Neither is true here. The MIA's determination that a mistake is not equivalent to a misrepresentation is well founded. The dictionary definition of the term "misrepresent" means "to give a false or misleading representation of usually with an intent to deceive or be unfair." Merriam-Webster, *Misrepresent*, <https://www.merriam-webster.com/dictionary/misrepresent>. (last viewed Oct. 13, 2023).<sup>6</sup>

We now turn to Graf's response to Galbreath's counteroffer. As explained, Nationwide was required under COMAR 31.15.12.06B to respond to that counteroffer within five business days with "a written explanation in clear and understandable language

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<sup>6</sup> In his reply brief, Galbreath argues for the first time that Nationwide was obligated to call Graf, not Goslee-Neeley, to prove the absence of an intent to mislead him. Because this argument was not raised in his opening brief, we do not consider it. *See Gazunis v. Foster*, 400 Md. 541, 554 (2007) ("appellate courts ordinarily do not consider issues that are raised for the first time in a party's reply brief"). In any event, the testimony of Graf's supervisor certainly was evidence from which the MIA could determine that Graf was not intentionally misleading Galbreath.

of why the information relied on by the claimant in the counteroffer does not provide a more accurate valuation than the information relied on by the insurer in its offer.” Here, Nationwide made a cash settlement offer of \$2,234.24. Galbreath made a counteroffer of \$3,685 “based on the midpoint between the average and high NADA valuations[,]” which he had “grossed up” to account for the fact that the Honda Accord had an automatic transmission, whereas the comparative vehicles were manual transmission. Graf responded the next day, stating in pertinent part:

[i]f we are to consider the value you’ve provided by NADA, we would also have to consider the value from similar sites like KBB and Edmunds. Both of those figures are lower than the one provided from CCC One. Based on those similar sites I don’t believe your request for a higher value is supported.

The MIA adopted the ALJ’s finding that Mr. Graf “timely responded to and rejected [Galbreath]’s counteroffer and explained its rationale for why it believed the CCC One valuation provided a more accurate valuation of the . . . vehicle.” We perceive no error. Graf’s response clearly articulated the basis for the rejection of the counteroffer by explaining that the NADA valuation was an outlier compared to other national sites, both of which valued similar vehicles below the cash settlement offer made by Nationwide.

For all these reasons, we affirm the decision of the circuit court affirming the final agency decision.

**JUDGMENTS OF THE CIRCUIT COURT FOR  
BALTIMORE COUNTY AFFIRMED. COSTS  
TO BE PAID BY APPELLANT.**