Circuit Court for Baltimore City
Case No. 24-C-16-003483

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2391

September Term, 2016

NORTH AMERICAN TITLE INSURANCE COMPANY

v.

MARYLAND INSURANCE ADMINISTRATION

Kehoe,
Berger,
Wilner, Alan M.,
(Retired, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: August 29, 2018

After investigating a complaint filed by Ocwen Financial Corporation, the Maryland Insurance Administration ordered North American Title Insurance Company ("North American")[1] to pay a claim on a title policy issued by North American to a predecessor-in-interest to Ocwen. The Administration also concluded that North American's refusal to pay Ocwen's claim violated several provisions of the Insurance Article.

North American appealed the Administration's order to the Maryland Insurance Commissioner. The Commissioner delegated the responsibility for holding a hearing and preparing a decision to the Associate Commissioner. After an evidentiary hearing, the Associate Commissioner reversed the Administration's order. He concluded that North American was not obligated to provide coverage under the policy and that the company did not otherwise violate the Insurance Article in its handling of Ocwen's claim.

The Administration filed a petition for judicial review in the Circuit Court for Baltimore City. After briefing and oral argument, the circuit court reversed the Associate Commissioner's decision. North American appealed and presents one issue, which we have reworded:

> Was North American bound by its purported agent's actions when the agent issued an insured client protection letter and a lender's title insurance policy to Ocwen's predecessor-in-interest?

[1] North American is sometimes referred to in the record as "NATIC," and sometimes as "Licensee." In our quotations from the record, we have replaced these terms with "North American," without the use of brackets.

Our answer to this question is "yes." However, instead of simply reversing the Associate Commissioner's decision, and thus reinstating the decision of the Maryland Insurance Administration, we think it more appropriate to the remand the case to the Associate Commissioner for further proceedings consistent with this opinion.

Background

In 2009, Michael and Carrie Short entered into an agreement with U.S. Mortgage Finance Corp. to refinance the existing mortgage on their residence in Harford County. As part of their agreement, the Shorts undertook to provide a title insurance policy to U.S. Mortgage that would protect its interest as the first lien holder on the Short property. They contacted REO Land Services, Inc., and requested REO to conduct the settlement. This included arranging for the issuance of a title insurance policy to protect U.S. Mortgage's interest in the Short property.

Pursuant to this engagement, REO issued an undated title commitment and a closing protection letter dated November 5, 2009 to U.S. Mortgage. As its name suggests, a title commitment, sometimes referred to as a "title binder," constitutes a promise by a title agent that its principal will issue title insurance subject to any limitations and exceptions contained in the commitment. *See 100 Investment Ltd. Partnership v. Columbia Town Center Title*, 430 Md. 197, 219 (2013). A closing protection letter[2] "protect[s] a lender

[2] Closing protection letters are sometimes referred to as "insured closing protection letters" and "insured closing letters."

against negligence at settlement or loss of loan proceeds or documents when the closing is being conducted by a title insurance company's approved attorney or licensed agent." Betsy Grace Cunningham and Lawrence F. Haislip, SETTLEMENT OF TITLE OF RESIDENTIAL REAL ESTATE § 7.22 (4th ed. 2004) (footnote omitted).

REO was an agent for Stewart Title Guaranty Company when it sent these documents to U.S. Mortgage. Although the title commitment did not identify an insurer, the closing protection letter identified Stewart Title as REO's principal.

REO conducted the settlement on the refinancing transaction on Friday, December 11, 2009. At the settlement, the Shorts directed REO to pay a premium for lender's title insurance out of the loan proceeds. The federal Truth in Lending Act gave the Shorts the right to rescind the loan transaction for three business days. Accordingly, REO was required to hold the loan proceeds in escrow until December 16th. REO was responsible for disbursing a portion of the loan proceeds to satisfy the lien from the preexisting mortgage once the three-day post-settlement cancellation period was over.

As we have related, at the time the Shorts began working with REO, it was an agent of Stewart Title Company. However, REO and Stewart Title parted ways, and, on December 14, 2009, i.e., after the settlement date but before the date of disbursement of the settlement proceeds, REO entered into an agency agreement with North American. This agreement authorized REO to issue title insurance and related documents, including closing protection letters. On that same date, REO used its access to North American's computerized document preparation system to generate another insured's closing protection letters, this

time as agent for North American. This document was issued to U.S. Mortgage, and was prepared by REO, at least purportedly, as an agent for North American. The closing protection letter bore North American's logo as well as the electronic signature of Beverly Akins, then a vice president at the company. The letter stated that North American agreed to protect the insured party, in this case U.S. Mortgage, should the agent, REO, fail to comply with U.S. Mortgage's written closing instructions, or in cases of "[f]raud, dishonesty or negligence of [REO]… in handling your funds or documents in connection with the closings to the extent that fraud, dishonesty or negligence relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land."

Because of an intervening weekend and the period for the Shorts' right of recession, the refinance loan was not funded until December 16, 2009. But the disbursements did not occur as the parties intended. An REO employee stole most of the loan proceeds. The balance due secured by the existing mortgage was not paid off and the existing lien was not released. The theft was not immediately detected.

In January 2010, REO, acting purportedly as the agent for North American, issued a lender's title insurance policy to U.S. Mortgage. The policy provided that U.S. Mortgage's deed of trust would be a first lien against the Short's property. The document stated that it was issued by North American, and was signed electronically by that company's president, Emilio Fernandez.

The terms of the written agency agreement between REO and North American required REO to forward to its principal copies of title insurance policies issued by REO in its name "no later than then end of the month following the closing of the transaction on which the Title policies are to be issued[.]" North American received its copy of the policy issued for the Short's refinancing on March 2, 2010. On the same day, North American received a check from REO for $8,249.51, representing North American's share of title insurance premiums collected by REO in a number of transactions, including the Short's refinancing. North American deposited the check in its premium income account. Its share of the Short's premium was $138.13.

A few months later, North American learned that criminal charges were pending against REO's principal for theft and other crimes arising out of a pattern of conduct, of which the Short's closing was but one example. North American terminated its relationship with REO and reviewed the premium payments from REO against information provided by REO in its ledger reports. North American concluded that its share of the Short's premium did not belong to it. North American then transferred its share of the Short's premium to a separate account. The Associate Commissioner found that this transfer took place sometime in June 2010. It is undisputed that North American has retained this money ever since and has not attempted to remit it to the Shorts.

U.S. Mortgage transferred the loan to GMAC shortly after closing. The loan was thereafter transferred again, with Ocwen serving as the servicing agent.

The Maryland Insurance Administration's investigation of the refinance transaction began in 2011, apparently as a result of an inquiry filed on behalf of GMAC. In 2012, GMAC, then the holder of the loan, filed a claim against North American because the prior mortgage had not been released. North American denied responsibility. The claims counsel writing on behalf of North American explained the company's position, which was that REO was not authorized to issue the Shorts' policy, so the company was not responsible for the claim. It does not appear that any further activity occurred related to GMAC's claim.[3]

GMAC transferred the Shorts' loan and Ocwen became the new servicing agent. In 2014, Ocwen filed a claim with North American. North American again denied the claim on grounds similar to those it asserted when denying GMAC's claim. The company also provided several other rationales for its denial.[4] The company further pointed to language in the insured's closing protection letter stating that one of the policy conditions is that written notice of a claim must be filed with North American within one year of the closing in order for the company to be liable. Ocwen filed a complaint with the Administration.

[3] In a 2014 letter discussing Ocwen's claim, North American's claims counsel acknowledged the prior claim by GMAC. He wrote that, "Eventually, the company closed the file after receiving no further response from GMAC regarding the analysis contained in the coverage opinion."

[4] For example, North American took the position that Ocwen had no right to make a claim on the policy because it was the loan servicer, as opposed to the holder of the note executed by the Shorts to US Mortgage. This argument, and others like it, did not play a role in the hearing before the Associate Commissioner and is not addressed by the parties on appeal.

After investigating Ocwen's complaint, the Administration issued its administrative findings in a letter dated February 13, 2015. After setting out the facts that we've previously summarized, it concluded that North American's refusal to pay the claim violated several provisions of the Insurance Article ("IA") of the Maryland Code, specifically, IA § 4-113;[5] which prohibits delaying payment on a claim without just cause; IA § 27-216;[6] which makes it unlawful for an insurer to collect a premium for insurance and then to refuse to issue a policy; and IA § 27-303[7] which prohibits an insurer from refusing to pay a claim

[5] IA § 4-113 reads in relevant part:

> (b) The Commissioner may deny a certificate of authority to an applicant or, subject to the hearing provisions of Title 2 of this article, refuse to renew, suspend, or revoke a certificate of authority if the applicant or holder of the certificate of authority:
>
> * * *
>
> (5) refuses or delays payment of amounts due claimants without just cause[.]

[6] IA § 27-216 reads in relevant part:

> (a) A person may not willfully collect a premium or charge for insurance if the insurance is not then provided, or is not in due course to be provided subject to acceptance of the risk by the insurer, in a policy issued by an insurer as authorized by this article.

[7] IA § 27-303 reads in relevant part:

> It is an unfair claim settlement practice and a violation of this subtitle for an insurer, nonprofit health service plan, or health maintenance organization to:
>
> * * *
>
> (2) refuse to pay a claim for an arbitrary or capricious reason based on all available information[.]

for an arbitrary or capricious reason. The Administration ordered North American to pay the claim, and further noted that North American was liable for restitution and fines.

North American appealed the Administration's decision to the Insurance Commissioner. As we have indicated, the Commissioner delegated this responsibility to the Associate Commissioner, who held an evidentiary hearing on March 21, 2016. The Associate Commissioner issued a Memorandum and Final Order (the "Decision") on May 11, 2016. The Associate Commissioner framed the dispositive issues as:

> whether REO was acting as an agent of North American when it signed the original title insurance contract. Furthermore, if an agency agreement was established, did North American violate the Maryland Insurance Article with its denial of this title insurance claim.

The Associate Commissioner's relevant findings of fact are as follows:

> REO entered into an agreement with North American to act as a producer and agent on their behalf on December 14, 2009. Shortly thereafter North American worked with REO to get their agents set up with account access. Following December 14, REO employees were able to access North American's online AgentLink system to create closing protection letters following the terms of the agency agreement. Prior to this access being granted, employees from REO had no way of accessing North American's files, forms, or paperwork.
>
> REO was not authorized to bind North American to any type of agreements or contracts prior to the December 14 date unless the transaction was specifically reviewed by North American's underwriters and approved. No such request was made or approved in this transaction.
>
> After this transaction closed, REO issued a second closing protection letter on December 16, 2009, bearing North American's logo and the signature of its Vice President, Beverly Akins. This letter was issued with a preprinted copy of Ms. Akins signature and was never actually signed by her. Once an agent is given access to the AgentLink system, North American has no ability to review the closing protection letters prior to [their] being issued. North American has no ability to reject, deny, disapprove, or take any action with

> respect to a closing protection letter before it is issued and mailed out. At the same time, REO also generated and issued a North American title insurance policy. This document specifically says on it that the mortgage date was December 11, 2009 and includes a handwritten loan number that was not put on the paperwork by North American. North American had no way of knowing this paperwork had been issued by REO until it was actually received by North American.
>
> On March 2, 2010, North American first received a copy of the title insurance policy. . . . When this paperwork came in it was accompanied with a large bulk remittance check in the amount of $8,249.51. This check was initially deposited directly into a bank account in one large lump sum as is North American's general business practice. . . . After their review North American determined that some of the premiums did not belong to them and therefore they backed out those premium amounts.
>
> The premium from the Short's refinance transaction was one of the ones which was backed out of this initial deposit account and moved into another account with SunTrust in June, 2010. The premium payment for this transaction, in the amount of $138.13, was moved to this other account based on the information provided by REO's ledger report which led North American to believe that this premium (along with several other premiums) did not belong to them. The SunTrust account is not a general account which North American uses for business transactions.

(Citations to the administrative record omitted.)

Based upon these findings, his interpretation of the agency agreement between REO and North American, and applicable legal principles, the Associate Commissioner concluded that REO was neither an actual nor an apparent agent of North American when the Short settlement took place and was therefore without authority to issue an insured closing letter or a title insurance policy on North American's behalf to U.S. Mortgage. Additionally, the Associate Commissioner concluded as a matter of law that the doctrine of ratification did not apply to the case.

The Administration sought judicial review of the decision in the Circuit Court for Baltimore City. The court reversed the Associate Commissioner's decision, concluding that REO was North American's actual agent at the time the insurance policy was issued and when the loss took place. Therefore, the court concluded that North American had violated the Insurance Article provisions identified by the Administration in its initial review. As an alternative basis for its decision, the court concluded that REO was North American's apparent agent. This appeal by North American followed.

We shall affirm the judgment of the circuit court in part and vacate it in part.

The Standard of Review

When reviewing an administrative agency's decision, "we look 'through the circuit court's… decision[], although applying the same standards of review, and evaluate[ ] the decision of the agency.'" *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 66 (2008) (quoting *People's Counsel for Baltimore County v. Surina*, 400 Md. 662, 681 (2007)); *see also Maryland Ins. Com'r v. Kaplan*, 434 Md. 280, 297 (2013).

While we give weight to an agency's interpretation of statutes it administers, "[w]e are under no constraint, however, to affirm an agency decision premised solely upon an erroneous conclusion of law." *People's Ins. Counsel Div. v. Allstate Ins. Co.*, 199 Md. App. 1, 7–8 (2011), *aff'd*, 424 Md. 443 (2012) (quotation marks omitted). "[A]ssuming that we agree with the administrative construction of the statute, the application of the correct legal standard to the facts of a particular case must be supported by substantial evidence—

that is, we assess 'whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.'" *Maryland Ins. Com'r v. Kaplan*, 434 Md. 280, 298 (2013) (quoting *Lumbermen's Mut. Cas. Co. v. Insurance Commissioner*, 302 Md. 248, 266 (1985)).

Analysis

We disagree with several aspects of the Associate Commissioner's reasoning. Whether REO was North American's agent when the Shorts signed the refinancing documents, i.e. December 11, 2009, is certainly relevant. But it is not by itself dispositive because REO unquestionably was North American's agent when it issued the lender's title policy to U.S. Mortgage; and remitted the policy premium to North American. Additionally, the Associate Commissioner placed great weight upon testimony of two North American employees in concluding that REO was without authority to issue a title policy to U.S. Mortgage. This conclusion is not consistent with the terms of the agency agreement between REO and North American, which in our view is controlling.

Finally, there is a separate, independent, and equally dispositive problem with the Associate Commissioner's reasoning. North American retained its share of the title insurance premium long after North American had taken the position that the title policy was not enforceable against it. By doing so, North American ratified REO's action in issuing the title policy.

1. REO's Authority to Bind North American

This case hinges on whether REO was acting as North American's agent when it issued (1) the closing protection letter, and (2) the title policy to U.S. Mortgage. These are independent bases for recovery against North American because a portion of the settlement proceeds were stolen (thus triggering the closing protection letter), and the prior lender's lien remains unreleased, a risk covered by the title insurance policy.

As the Court of Appeals explained in *Dickerson v. Longoria*, 414 Md. 419, 441–42 (2010), "In an agency relationship, one person, the principal, can be legally bound by actions taken by another person, the agent. An agency relationship is created when the principal confers actual authority on the agent." If REO was an agent of North American when it issued the insured closing letter and the title policy to Shorts, then North American is bound by that action. The Associate Commissioner found that REO was not an agent. We discuss the relevant possibilities below.

A. Actual Agency

North American contends that the Associate Commissioner correctly determined that REO had no actual authority to act on its behalf during the transaction with the Shorts. Whether such authority existed depends on the interpretation of the agency agreement setting out the terms of the relationship between REO and North American.

At both the administrative level and to this court, North American contends that REO was not its authorized agent because the closing protection letter and the title policy were issued for a transaction on which closing occurred prior to the date that REO became North

American's agent. North American bases this argument on the testimony of two witnesses and its reading of the agency agreement between REO and North American.

The first witness was Beverly Akins, who had been the Vice President, Operations Manager for North American in 2009. She testified that "the contract," by which she meant the agency agreement between REO and North American, did not authorize REO to issue a client protection letter for a transaction that had closed prior to REO's becoming an agent.[8] However, she also testified that she did not know how North American notified new agents of this policy.[9] Nor did Ms. Akins testify as to whether REO was authorized to issue the title policy to US Mortgage.

The second witness was Margery Lee, an Executive Vice President of North American and the company's manager of claims and litigation. She also was questioned about whether REO had the authority to issue a closing protection letter for a settlement that took place prior to the effective date of the agency relationship. She testified that for North

[8] As we will explain , we read the agency agreement differently.

[8] [North American' Counsel]: How does North American let people know its policy that closing protection letters can't be issued for transactions that have already closed prior to agents becoming North American agents?

[Ms. Akins]: I honestly can't answer that. I did not deal with agent's responsibilities.

American to do so would "certainly be reckless."[10] She characterized the possibility of North American's issuing a title policy in such a situation as ranging from "remote" to "it would never happen." The Associate Commissioner accepted this testimony as part of the basis for his finding that:

[10] The relevant portion of the transcript reads (questions by North American's counsel; answers by Ms. Lee):

> Q: Is there a business reason North American would not issue a closing protection letter on a transaction that had not been previously involved within [sic] any respect?
>
> A: Well, in order for —if North American were to allow a title agent to issue a CPL on a transaction they had no information on, that it was not privy to the title search or its examination process, it would certainly be reckless on the part of North American . . . .
>
> Q: Is REO, in this instance, authorized to protection letter in a truncation where North American had not seen the underwriting:
>
> A: No. REO or any other agent . . . would not be permitted to do that.
>
> Q: And in what circumstances would a proposed transaction go to underwriting[?]
>
> A: Well, there might be a number of situations. It might involve[:] extraordinary risk . . . hazardous risk . . . breach in priority due to mechanic's lien . . . the amount of insurance . . .
>
> In a situation where you have a new agent . . . sometimes the title agent who has just newly signed with North American Title might approach underwriting . . . with a pending transaction. . . . And in that situation, underwriting counsel would want to look at all of the title search and examination. . . ."
>
> * * *
>
> If this transaction have [sic] funded, North American would certainly not step into the breach and allow this paper to be issued to insure the lien priority of, say, a new lender. If the transaction had already closed, certainly the possibility of North American allowing itself to be the underwriter in that situation is moot. It's remote. It would never happen.

> REO was not authorized to bind North American to any type of agreements or contracts prior to the December 14 date unless the transaction was specifically reviewed by North American underwriters and approved. No such request was made or approved in this transaction.

(Citations omitted.)

The Associate Commissioner also considered the terms of the agency agreement between REO and North American. He stated:

> Actual authority is established by any terms of the actual written agreement. . . . Therefore, since there was a written agreement between REO and North American, I will look to the terms of their agreement as the starting point for any of REO's authority. The North American Title Insurance Company Issuing Agency Contract was . . . executed on December 14, 2009, [and] lays out the specific terms of the agreement between REO and North American. According to Section 7B of the agreement "Limitations on Agent's Authority," "Agent shall not, without prior written approval of Principal: Alter the printed language of any commitment, Title policy, endorsement, or other forms furnished by Principal, or commit Principal to any particular interpretation of the terms of provisions therefore or issue any policy, endorsement or other title assurance which has not been approved for use by all required state regulatory agencies and by Principal."
>
> The agreement between REO and the Shorts was signed on December 11, 2009 as evidenced by the signing of the Deed of Trust and the date listed on the Settlement Statement. This was three days prior to the date North American and REO entered into their written contract. The paperwork issued by REO at the time of the signing was issued without any mention of North American, was not issued on North American's, and did not contain any of North American's printed language. Therefore by the express terms of the North American Title Insurance Company Issuing Agency Contract North American could not be bound by paperwork REO issued on December 11, 2009.

There are problems with the Associate Commissioner's analysis. One is that the Administration did not assert that North American was bound by the documents issued by REO on December 11, 2009. The basis of the Administration's case against the insurer

was, and is, that North American is bound by the closing protection letter and the title policy, both of which were issued on or after December 14, 2009, the date that REO became North American's agent. The Associate Commissioner's actual authority analysis does not squarely address the rationale of the Administration's order.

In this Court, North American relies on § 7B of the agency agreement for its contention that REO was not authorized to issue a policy for a closing that occurred prior to the agency agreement. This provision reads in pertinent part (emphasis added):

> 7. LIMITATIONS ON AGENT'S AUTHORITY. Agent shall not, without prior written approval of Principal:
>
> * * *
>
> B. *Alter the printed language* of any commitment, Title Policy, endorsement, or other forms furnished by Principal, or *commit Principal to any particular interpretation of the terms or provisions* thereof or issue any policy, endorsement or other title assurance which has not been approved for use by all required state regulatory agencies and by Principal.
>
> * * *

There is no claim, however, that any language in the policy issued to U.S. Mortgage by REO had been altered, or that REO committed North American to coverage not

contained within the four corners of the policy.[11] Nor was there any indication that REO's use of the computer system to generate the form was unauthorized; as an agent of North American, REO had been given the credentials to access the system at the time it issued the client protection letter and the title policy. There is nothing in the agency agreement that prohibits REO from issuing client protection letters or title policies connected with transactions in which settlement occurred but no funds were disbursed before the date of the agreement. There is nothing in the agency agreement that requires a new agent to submit proposed title commitments to North American's underwriting department for review and approval. In other words, none of the safeguards and business practices described by Ms. Akins and Ms. Lee in their testimony appear in the agency agreement itself. And, as we will now explain, the terms of the agreement are controlling.

The agency agreement contains an integration clause which reads (emphasis added):

> ENTIRE CONTRACT; PRIOR CONTRACTS. This Contract sets forth the entire understanding and Contract between the parties hereto with respect to the subject matter hereof. No terms, conditions, or warranties, other than

[11] North American points out that there is a handwritten "policy number" on the first page of the title policy and that this shows that the policy was, in fact, altered. The Associate Commissioner referred to the handwritten number in his decision, although it does not appear that he placed great significance on it.

There is indeed a handwritten number on the cover page, viz., "602530555." But on the same page, there is also an explicitly identified, pre-printed policy number, i.e. "B058.07804261."

The policy was issued to U.S. Mortgage, then transferred to GMAC, who in turn delivered it to Ocwen. No one knows who added the handwritten number or why. North American does not explain how the addition of this number changes the terms of the policy. We conclude that it did not.

> those contained herein, and no amendments or modifications hereto shall be valid unless made in writing and signed by the parties hereto. *This Contract supersedes all prior understandings of any kind, whether written or oral, with respect to the contract and the subject matter hereof.* Agent represents that it is not bound by any contracts with others that would prohibit Agent from entering into this Contract.

The rules of contract interpretation govern the reading of agency agreements. *See* Restatement (Second) of Agency § 32 (1958) ("Except to the extent that the fiduciary relation between principal and agent requires special rules, the rules for the interpretation of contracts apply to the interpretation of authority.") Section 48 of the Restatement also states that the parol evidence rule applies, meaning that an integrated agreement, not prior or contemporaneous agreements between the parties, is the final word on the arrangement between them.[12] The agency agreement was an integrated contract.

Thus, the Associate Commissioner's focus on whether REO had actual authority on December 11, 2009 was misplaced—his focus should have been on REO's legal relationship to North American when REO issued the closing protection letter and the title policy. By then, REO unquestionably was the agent of North American. The scope of REO's actual authority was defined by the terms of the agency agreement, and that

[12] Restatement (Second) of Agency § 48 states:

> Parol Evidence Rule
>
> The rule applicable to the contradiction or alteration of an integrated contract by extrinsic evidence apply to an integrated agreement between principal and agent as to the agent's authority.

agreement unambiguously authorized REO to issue closing protection letters and title insurance policies without limitation as to the date that the settlement occurred.

B. Apparent Agency

At the hearing before the Associate Commissioner, the Administration contended that North American was obligated to honor the policy because REO was its apparent agent. The Associate Commissioner was not convinced, nor are we.

Apparent agency consists of three elements, which the Court of Appeals summarized in *Bradford v. Jai Med. Sys. Managed Care Organizations*, 439 Md. 2, 18 (2014):

> 1. Did the apparent principal create, or acquiesce in, the appearance that an agency relationship existed?
>
> 2. Did the plaintiff believe that an agency relationship existed and rely on that belief in seeking the services of the apparent agent?
>
> 3. Were the plaintiff's belief and reliance reasonable?

Without belaboring the point, there was no evidence in the record that either the Shorts or U.S. Mortgage took any steps to their respective detriment based upon the belief that there was an agency relationship between REO and North American.

C. Ratification

As an alternative basis for our decision, we conclude that North American ratified REO's transaction with the Shorts. There are several ways in which a principal may ratify an unauthorized action by a purported agent. One of them is to retain the benefit of the agent's action after the principal has knowledge of the actual facts:

> A corporation may be found to have ratified an unauthorized act by adopting it or acquiescing in it, by accepting and retaining its benefits, or by failing to timely disavow or repudiate it. In all these circumstances, for ratification to happen there must be knowledge of the material facts affecting the act or transaction.

Tower Oaks Blvd., LLC v. Procida, 219 Md. App. 376, 406 (2014) (citations omitted); *Smith v. Merritt Savings & Loan*, 266 Md. 526, 539 (1972) (A principal can ratify an agent's actions when the principal accepts the benefits of those acts after notice that the agent's actions were wrongful.); *see also* Restatement (Second) Agency § 99.[13] This principle applies in the insurance context:

> Even if the underwriter acted completely without authority, [an insurer] can nevertheless become liable if it ratifies the agent's conduct. Ratification requires an intention to ratify [with] knowledge of all material facts. Intention to ratify may be inferred by words, conduct or silence on the part of the principal that reasonably indicates its desire to affirm the unauthorized act. Circumstances that suggest an intent to ratify include: receipt and retention of the benefits of the unauthorized transaction[.]

Progressive Insurance v. Ehrhardt, 69 Md. App. 431, 441–42 (1986) (citations omitted).

[13] Section 99 states:

> Retention of Benefits as Affirmance
>
> The retention by a purported principal, with knowledge of the facts and before he has changed his position, of something which he is not entitled to retain unless an act purported to be done on his account is affirmed, and to which he makes no claim except through such act, constitutes an affirmance unless at the time of such retention he repudiates the act. Even if he repudiates the act, his retention constitutes an affirmance at the election of the other party to the transaction.

On January 19, 2012, North American denied GMAC's claim on the basis "REO had no legal authority to commit North American to insure" the Short refinancing transaction. North American reiterated this position in 2014, when it denied Ocwen's claim. But North American cannot have it both ways—if REO did not have the authority to bind North American, then the insurer had no right to retain the policy premium. It was incumbent on North American to return the premium, or at least its share of the premium, to the Shorts. However, North American did no such thing.

North American maintains that it moved the money from a corporate account to a trust account with the intention of sending it to Stewart Title, which it believed to be the actual responsible party for the policy. The problem with this argument from North American's perspective is that it neither paid nor tendered the premium to Stewart Title. Nor, for that matter, did North American take any steps, such as filing a declaratory judgment action, to resolve the coverage dispute between it and Stewart Title.

North American's failure to act is dispositive. After taking the position that the policy was void, North American nonetheless retained the policy premium. That North American moved the premium amount from one bank account to another is immaterial. We hold that North American ratified REO's actions by retaining its share of the premium collected by REO from the Shorts and paid by REO to North American.

2. North American's violations of the Insurance Article

The Administration concluded that North American's handling of Ocwen's claim violated three provisions of the Insurance Article:

> An insurer may not refuse or delay payment of an amount due to a claimant without just cause. See § 4-113(b)(5); see also COMAR 31.15.07.03A(3). An insurer may not refuse to pay a claim for an arbitrary or capricious reason based on all available information. See § 27-303(2); see also COMAR 31.15.07.03 A(3). An insurer may not accept premium and fail to provide the coverage for which premium was paid in a policy issued by the insurer. These are unfair claim settlement practices and violations of the Insurance Article and COMAR.

The Associate Commissioner disagreed, based in no small part on his conclusion that that North American was not obligated to honor the policy. As we have discussed, this conclusion was erroneous as a matter of law.

As a general rule, if a court decides that an administrative agency's decision is based upon an error of law, the proper course is to remand the case to the agency for it to reconsider the matter in light of the court's explanation of the applicable legal standard. *See Board of Public Works v. K. Hovnanian's Four Seasons*, 425 Md. 482, 522 (2012) ("The error committed by the Board was one of law—applying the wrong standard in formulating its decision. The appropriate remedy in such a situation is to vacate the decision and remand for further proceedings designed to correct the error."). A remand is appropriate here so that the Insurance Commissioner can re-evaluate the Administration's conclusions as to violations of the Insurance Article and COMAR in light of our holdings.

The Commissioner's ultimate decision should, of course, provide that North American is obligated to pay Ocwen's claim.[14]

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS AFFIRMED IN PART AND VACATED IN PART AND THIS CASE IS REMANDED TO IT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANT.

[14] In his decision, and in the context of concluding that North American did not violate IA § 27-216, which prohibits a person from willfully collecting a premium "if the insurance is not then provided," the Associate Commissioner stated:

> Once it was determined that North American did not believe the portion of this check from this transaction belonged to them, it moved [its share of the Short's premium] to another bank account which the company did not use for general business transactions. North American did not willfully collect this premium and then refuse to issue the policy.

We agree with the Associate Commissioner up to a point; North American did not violate § 27-216 when it processed the bulk premium payment from REO. Whether the company violated § 27-216 by retaining the premium for years after it took the position that the policy was not enforceable may be a different question that the Associate Commissioner should address on remand.