Circuit Court for Baltimore City
Case No. 24-C-17-003518

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3096

September Term, 2018

JAMES E. DAVIS

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Wells,
Ripken,
Meredith, Timothy, E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 23, 2021

This appeal arises from a petition, filed in the Circuit Court for Baltimore City, requesting judicial review of a final determination of the Maryland Insurance Administration ("MIA") concluding that appellee, State Farm Mutual Automobile Insurance Company ("State Farm"), properly rated the automobile insurance of appellant, James E. Davis ("Davis"), and did not impermissibly discriminate on the basis of race. Prior to appealing to this Court, Davis sought review of the MIA's final determination from the Circuit Court for Baltimore City. Following the circuit court's remand to the MIA on procedural grounds, the MIA affirmed the final determination. Davis moved to reopen proceedings in the circuit court, and the motion was granted. A hearing on the merits was held, and the circuit court affirmed the MIA final determination.

On appeal to this Court, Davis presents two issues for review. First, he contends the MIA did not have substantial evidence to support its determination. Second, he contends the MIA's determination was incorrect as a matter of law.[1] For the reasons stated below, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On May 18, 2016, Davis filed a complaint with the MIA against State Farm. In the complaint, Davis alleged that State Farm's consideration of insureds' places of residence when calculating their insurance premiums resulted in a pattern of discrimination against people of color throughout the state.

[1] The issues as phrased in his brief are stated verbatim *infra* at note 9.

Following an investigation, the MIA concluded that "State Farm does not use unfairly discriminatory factors, such as race, in the rates it charges to policyholders." Davis requested a hearing pursuant to Maryland Code, Insurance Article ("IN"), § 2-210(a)(2) (1997, 2017 Repl. Vol.). The MIA referred the case to the Office of Administrative Hearings ("OAH"), which held a hearing before an administrative law judge ("ALJ").

On April 5, 2017, at the hearing before the ALJ, Davis appeared *pro se* and testified in his case in chief. He alleged a direct correlation between counties with elevated insurance rates and counties with high percentages of people of color. Davis based his allegation on the 2010 United States census data and a 2016 MIA publication titled "Auto Insurance: A Comparison Guide to Rates" ("the Comparison Guide"). The Comparison Guide summarized multiple insurance companies' premiums for various hypothetical drivers residing in designated zip codes within each Maryland county. Davis focused on Schedule 6 of the Comparison Guide, which provided sample premiums for a hypothetical driver most like himself. The hypothetical driver was a single sixty-five-year-old man who (i) owns a 2012 Ford Escape XLS, (ii) drives five thousand miles per year for pleasure, (iii) owns a home, (iv) has excellent credit history, and (v) has not, for the past three years, been in a traffic accident or been cited for a moving violation. The census data, in turn, provided information regarding the racial composition and the population density of each Maryland county.[2] Davis created a chart depicting the comparison between census data and State

[2] At the hearing, Davis contended that he obtained demographic data and population density data for particular zip codes. Upon review of the census data cited, it appears Davis relied on data for counties rather than data for particular zip codes within counties.

Farm rates from each county and its designated zip code. Davis moved to admit the chart into evidence, and the court granted the request. For ease of reference, the chart has been recreated below.[3]

County	Zip Code	[SF Rate]	County Ranked by [SF Rate]	Zip Code Non-White [Percent]	County Ranked by Zip Code Non-White Percent
Allegany	21502	$559	*	10.6%	*
Garrett	21550	$567	*	16.7%	*
Washington	21740	$575	*	9.3%	*
Montgomery	20904	$755	5	55.2%	5
Prince George's	20744	$825	3	86.6%	1
Calvert	20678	$652	9	27.3%	13
Charles	20603	$785	4	64.5%	2
Saint Mary's	20650	$623	11	29.3%	12
Anne Arundel	21401	$672	8	39.9%	10
Baltimore City	21218	$1124	1	63.7%	3
Baltimore	21117	$896	2	58.8%	4
Carroll	21157	$641	10	38%	11
Cecil	21921	$738	?	24%	?
Frederick	21701	$542	*	7.9%	*
Harford	21014	$690	7	50.2%	6
Howard	21044	$694	6	44.5%	7
Caroline	21629	$569	*	*	*
Dorchester	21613	$590	*	*	*
Kent	21620	$560	*	*	*
Queen Anne's	21617	$557	*	*	*
Somerset	21853	$618	12	44.3%	8
Talbot	21601	$549	*	*	*
Wicomico	21804	$605	13	43.3%	9
Worcester	21811	$574	*	5.5%	*

[3] "*" Denotes the row was left blank in Davis' table.

Comparing eight counties on Maryland's Eastern Shore, Davis testified that there was a direct correlation between the percentage of non-white residents of those counties and the rate that State Farm charged individuals residing in specific zip codes in those counties.[4] He also compared the racial composition of the five counties neighboring Montgomery and Prince George's Counties with State Farm's premium rates. Again, he concluded that the percent of non-white residents of those counties directly correlated with State Farm's premium rates.

Davis further testified that the disparity in premium rates was not attributable to other actuarial factors. Relying on the census data, he claimed that there was no correlation between a county's population density and State Farm's insurance rates. Davis also cited "crash data" that he had obtained from the Maryland Motor Vehicle Administration ("MVA"). Based on this information, he testified that the counties with the greatest number of traffic accidents did not necessarily have the highest premium rates. Having demonstrated that neither population density nor accident rates are dispositive of State Farm insurance premiums, Davis concluded that race was the dispositive factor. To more clearly demonstrate his findings, Davis moved into evidence two charts that he created, which we have reorganized for ease of reference and included below.

[4] Davis excluded Cecil County from his analysis notwithstanding its being among the Maryland counties on Maryland's Eastern Shore. Davis identified Cecil County premiums as "questionable," presumably because although only twenty-four percent of its population is non-white, the State Farm rate for Cecil County residents is significantly higher than the rate for residents of any other county on Maryland's Eastern Shore.

Maryland Eastern Shore Counties

County	Population	Non-White	Population Density	Crashes[5]	SF Rate	SF Rank
Somerset	25,768	46%	83	0.3%	$678	1
Wicomico	102,370	32%	264	2.0%	$673	2
Dorchester	32,384	32%	60	0.5%	$660	3
Caroline	32,579	19%	104	0.4%	$647	4
Queen Anne's	48,904	11%	129	0.8%	$636	5
Worchester	51,540	17%	110	1.3%	$630	6
Kent	19,787	18%	73	0.2%	$599	7
Talbot	37,512	17%	141	0.8%	$598	8

[Counties Neighboring Montgomery & Prince George's Counties]

County	Population	Non-White	Population Density	Crashes	SF Rate	SF Rank
Charles	156,118	53%	320	2.6%	$899	1
Howard	313,414	40%	1145	3.6%	$801	2
Anne Arundel	564,195	24%	1296	9.4%	$784	3
Calvert	90,595	18%	416	1.3%	$717	4
Frederick	245,322	18%	354	2.8%	$598	5

On cross-examination, Davis conceded that his dataset suffered from various defects and deficiencies. First, he acknowledged that he did not know whether the demographic data was representative of the racial composition of State's Farm's insured pools. He then admitted that there are various reasons why the number of motor vehicle collisions reported to the MVA might not accurately reflect the number of claims filed with State Farm. Specifically, he conceded that (i) not all claims arise from automotive collisions, (ii) not all collisions are necessarily reported to the MVA, (iii) a single crash could result in harm

[5] In the legend to "Maryland Eastern Shore Counties," Davis explained that the "crash data" refers to the "[p]ercent of vehicle crashes statewide which occurred in [each] county[.]"

to an indeterminate number of vehicles and people and could therefore result in numerous claims, and (iv) the cost of claims could vary significantly.

After Davis finished testifying and closed his case, State Farm called its sole witness, Wendy Riggs-Richie ("Riggs-Richie"), a team manager for State Farm's underwriting department. Riggs-Richie testified that when determining the appropriate premium for a policy, State Farm considers various factors, including: (i) the make and model of the vehicle, (ii) the vehicle's total mileage, (iii) the annual mileage driven, (iv) the anticipated future use of the vehicle, (v) the number of drivers in the household, (vi) the driver's credit history, and (vii) the location in which the vehicle is garaged.[6] She expressly denied that State Farm either considers race as a factor or possesses information regarding the racial composition of its insured pools.

Riggs-Richie elaborated upon the way State Farm utilizes an insured's place of residence when calculating his or her insurance premium. She testified that, when possible, State Farm relies on latitudinal and longitudinal coordinates to determine in which State Farm-designated territory an insured resides. If latitudinal and longitudinal information is unavailable, she explained, State Farm relies on either an insured's zip code or county of residence. She further explained that State Farm could increase or decrease an insured's premium depending upon the degree of risk associated with where the insured garaged their vehicle. Though the location where a vehicle is garaged affects an insured's premium,

[6] Riggs-Richie explained that, for purposes of calculating an insured's premium, a vehicle is "garaged" at the insured's place of residence.

Riggs-Richie testified, it does not affect the actuarial formula by which that premium is calculated. In other words, no more weight is afforded to a particular actuarial factor in one territory than in another.

Riggs-Richie further testified that State Farm submits its rate plans to the MIA to ensure compliance with the Maryland Code. In her experience, when a rate plan does not comply, the MIA requires State Farm to withdraw and amend the plan.

State Farm produced two documents that were admitted into evidence without objection. The first document was State Farm's 2015 Certification Statement to the MIA, which confirmed that State Farm's use of territorial data is actuarily justified. The second was a chart that Riggs-Ritchie testified had been prepared by State Farm's actuary department. That chart provided the "loss ratio relativity" for Maryland's counties.[7] Riggs-Richie explained that Baltimore City, as well as Prince George's, Baltimore, and Charles counties collectively have elevated loss ratios compared to other Maryland counties. These disproportionately high loss ratios indicate that State Farm pays more on claims in those counties than it earns in premiums relative to other counties. It is for that reason, she explained, that the premiums in those regions are disproportionately higher than other counties.

[7] "Loss ratio" refers to "the ratio between insurance losses incurred and premiums earned during a given period." Merriam-Webster's Collegiate Dictionary at 687 (10th ed. 2002). "Loss ratio relativity," in turn, refers to the comparison of one entity's loss ratio to the loss ratio of a group of such entities. The "loss ratio relativity" at issue here compares the loss ratios of each county to the loss ratio statewide.

Riggs-Richie expressed skepticism regarding the reliability of the Comparison Guide used by Davis in creating his charts. She testified that while the Comparison Guide provided different base rates for residents of Alleghany, Garrett, and Frederick counties, those counties are in the same State Farm designated territory. Otherwise identically situated residents of those counties would, therefore, share the same State Farm insurance premium. Caroline, Kent, Queen Anne's, and Talbot counties are likewise grouped together in a single territory, as are Dorchester, Somerset, Wicomico, and Worchester counties. Unclear as to the basis for the disparity, Riggs-Richie emphasized that the Comparison Guide contains a disclaimer, which provides that it "should be used for educational purposes only." She further testified that State Farm did not participate in compiling the Comparison Guide.

In the "Proposed Decision," the ALJ found that Davis had not proven by a preponderance of the evidence that State Farm's premium rates are either unfairly discriminatory or "based wholly or partly on geographic area itself, as opposed to underlying risk considerations, even though expressed in geographic terms," pursuant to IN § 11-306(e)(4). Furthermore, the ALJ found that State Farm's consideration of residence was not racially discriminatory and complied with IN § 11-205(f)(4). Pursuant to Code of Maryland Regulations ("COMAR") 31.02.01.10-1B(1), Davis filed "Exceptions to the Proposed Decision" with the MIA on May 17, 2017. State Farm filed a response to the exceptions on June 5, 2017. Upon review of the exceptions and the ALJ's Proposed Decision, the MIA, through its Commissioner, adopted the ALJ's Proposed

Decision in a final determination filed on June 7, 2017. Davis filed a response ("Reply") to State Farm's response on June 12, 2017.

Davis sought judicial review in the Circuit Court for Baltimore City on June 30, 2017. Finding that the Maryland Insurance Commissioner ("the Commissioner") had not notified the Commission on Civil Rights ("CCR") of Davis' complaint as prescribed by IN § 2-202(c), the court remanded the case to the MIA so that it could properly apprise the CCR.[8] The court further ordered that if Davis did not prevail on remand, the "matter shall be re-opened at [Davis'] request and a hearing be granted." In compliance with the court's order, the MIA notified the CCR of Davis's complaint. The CCR declined to intervene in the case. A July 6, 2018, letter from the CCR explained:

> Upon discussion with the complainant and considering his desire to move forward, the length of time it has taken to place his case in the present posture, the length of time it will take to reset the case and in the interest of justice, the Commission on Civil Rights will not intervene in this matter and permits Mr. Davis to pursue his appeal before the Circuit Court of Baltimore City by refiling his appeal.

Davis again petitioned for judicial review, and the case was reopened. Following a hearing, the Circuit Court for Baltimore City affirmed the MIA's final determination. Davis subsequently filed this timely appeal.

Additional facts will be provided as needed.

[8] Where a complainant alleges "discrimination on the basis of race, creed, color, or national origin," IN § 2-202(a) confers concurrent jurisdiction on the CCR. Accordingly, IN § 2-202(c) requires that the Commissioner "notify the Commission on Civil Rights of any hearing scheduled on a complaint about alleged discriminatory practices."

ISSUES PRESENTED

On appeal, Davis requests we review two issues, which we have consolidated and rephrased to the following: Was the agency's decision supported by substantial evidence and legally correct?[9]

DISCUSSION

I. Standard of Review

"[W]e review directly the agency's decision and not that of the lower court[]." *In re J.C.N.*, 460 Md. 371, 386 (2018). While we apply the same standard of review as the circuit court, we "look[] through the circuit court's . . . decisions" and review the administrative

[9] As phrased by Davis, the questions presented were:

> 1. Was the Circuit Court's November 13, 2018, ORDER (written and provided by State Farm, but completely unrelated to the actual Court proceedings) relative to its Denial of the Appellant's Petition to Reopen the Request for Judicial Review, based on the Issues, Findings of Fact, and Md. Insurance law, in consideration of the "whole record" or solely on the ALJ's highly questionable and heavily disputed Proposed Decision? Did the extraordinarily narrow scope of the Court's purported review prejudice the legal rights of the Appellant?
>
> 2. Does State Farm (or any auto insurer) have the right to overcharge the Appellant and other policyholders in geographical areas with a high percentage of African Americans and other people of color without providing the MIA any corroboratory data to justify the amount of the overcharge? And does State Farm (or any auto insurer) have the right to consistently charge its highest rates to geographical areas, territories, counties[,] and/or zip codes with the highest percentage of African Americans and other people of color just because the company has been successful enough to get its rate plan approved by the MIA[?]

agency's final decision.[10] *People's Counsel for Balt. Cty. v. Surina*, 400 Md. 662, 681 (2007). This Court "must review the agency's decision in the light most favorable to it" and recognize that "the agency's decision is prima facie correct and presumed valid." *Critical Area Comm'n for the Chesapeake & Atl. Coastal Bays v. Moreland, LLC*, 418 Md. 111, 123 (2011) (quoting *Md. Aviation Admin. v. Noland*, 386 Md. 556, 571, (2005)). This Court's review of an administrative agency's determination is narrowly "limited to determining if there is [1] substantial evidence in the record as a whole to support the agency's findings and conclusions, and [2] to determine if the administrative decision is premised upon an erroneous conclusion of law." *Cosby v. Dep't of Human Res.*, 425 Md. 629, 638 (2012) (citations and internal quotations omitted).

To determine whether there is substantial evidence to support the agency's findings and conclusions, we look to see "whether the ALJ's determination was 'supported by evidence which a reasonable person could accept as adequately supporting [the] conclusion.'" *In re J.C.N.*, 460 Md. at 386 (quoting *Kenwood Gardens Condos., Inc. v. Whalen Props., LLC*, 449 Md. 313, 325 (2016)). This does *not* mean we resolve conflicting evidence—doing so is squarely within the province of the administrative agency. *Banks*, 354 Md. at 68. Our review of the administrative agency's legal conclusion is de novo, and "we may reverse an administrative decision premised on erroneous legal conclusions." *Catonsville Nursing Home, Inc. v. Loveman*, 349 Md. 560, 569 (1998).

[10] Davis alleges various errors on the part of the circuit court. Given that the scope of our review is limited to the decision of the agency, we shall not address the merits of those contentions.

II. Substantial Evidence Supported the ALJ's Factual Findings

Davis contends that reversal is warranted because State Farm produced insufficient evidence to support the ALJ's conclusion that State Farm's rates were not unfairly discriminatory in violation of IN § 11-205(d). Davis challenges the three following factual findings of the ALJ:[11]

> [1.] The Licensee does not use an insured's race as a factor in determining the rates it charges to policyholders.
>
> * * *
>
> [2.] The Licensee's loss experience for Baltimore City, Baltimore County, Prince George's County and Charles County is higher than the Maryland average. As a result, the Licensee charges higher premiums for insureds in those jurisdictions than in other Maryland counties.
>
> * * *
>
> [3.] The Licensee's rates are actuarially justified.

Viewed in the light most favorable to the MIA, the evidence adduced at the hearing adequately supported the factual findings at issue.

A. Burden of Proof

"[T]he burden of proof is generally on the party asserting the affirmative of an issue before an administrative body." *Comm'r of Lab. & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996) (quoting *Bernstein v. Real Estate Comm'n*, 221 Md. 221, 231 (1959)).

[11] The ALJ's factual findings were numbers 21, 25, and 26 respectively in the Proposed Decision. They have been renumbered here for clarity.

IN § 11-205(d) provides that "[r]ates may not be excessive, inadequate, or unfairly discriminatory." "Unfair discrimination, as the term is employed by the Insurance Code, means discrimination among insureds of the same class based upon something other than actuarial risk." *Ins. Comm'r v. Engelman*, 345 Md. 402, 413 (1997). The party asserting unfair discrimination has the burden to demonstrate discrimination based upon something other than actuarial risk by a preponderance of the evidence.

Davis has inverted the burden of persuasion. As the party asserting the affirmative of an issue, it was Davis—not State Farm—who bore the burden of proving by a preponderance of the evidence that State Farm's premium rates were "based upon something other than actuarial risk." Davis may have satisfied that burden had he presented State Farm claims data indicating that its rates were not actuarially justified.[12] Instead, he presented evidence suggesting a correlation between some counties' racial composition and the rates charged to residents of those counties. That ostensible correlation does not prove that State's Farm's rates are "based upon something other than actuarial risk." Notwithstanding the fact that Davis failed to satisfy his burden of proof, State Farm presented sufficient evidence for the ALJ to find that (1) race was not a rate factor, (2) loss ratios correlate to higher premiums, and (3) State Farm's rates are actuarily justified.

[12] As the ALJ rightly noted, however, Davis "did not avail himself of the opportunity . . . to obtain the underlying claims data from [State Farm]."

B. Factual Finding [1.]: Race is Not a Rate Factor

"It is well settled that the credibility findings of an agency representative who sees and hears witnesses during an administrative proceeding are entitled to great deference on judicial review." *Finucan v. Md. State Bd. of Physician Quality Assur.*, 151 Md. App. 399, 421 (2003), *aff'd* 380 Md. 577 (2004). On direct examination, Riggs-Richie expressly denied that race was among the factors that State Farm considers when calculating premiums. She further testified that State Farm is unaware of the racial composition of its insured pools. The loss ratio relativities data further supported the first challenged finding by providing a race-neutral reason why insurance premiums are disproportionately high for residents of Baltimore City, Baltimore County, Prince George's County, and Charles County.

In challenging this finding, Davis claims that State Farm could "easily incorporate '[r]ace' in its auto insurance rate setting via the use of US Census data for geographical areas[.]" However, State Farm's ability to obtain demographic data is not proof that it did so. This Court concludes that a reasonable person could accept the evidence as adequate support for finding that State Farm does not consider race when calculating premium price.

C. Factual Finding [2.]: Loss Ratios Correlate to Higher Premiums

Davis argues that the ALJ's reliance on the loss ratio relativities was misplaced because Riggs-Richie was unable to explain how they were calculated and did not present the underlying claims data from which they were derived.[13] However, the ALJ's finding

[13] To the extent that Davis is arguing that an adequate foundation had not been laid for the admission of the loss ratio relativities into evidence, he waived that contention by failing to object to their admission.

was based on substantial evidence, namely Riggs-Richie's testimony and State Farm's actuarial chart describing loss ratio relativities. None of the evidence that Davis presented contradicted the conclusion that loss ratio relativities correlate to higher premiums. At the hearing, Riggs-Richie testified, "State Farm determines its rates based off of differences and loss experience." "Loss experience" refers to "the money that [State Farm] pay[s] out for claims." This testimony was corroborated by State Farm's certification to the MIA. Davis, in turn, introduced into evidence a chart, the first depicted above, indicating that State Farm charges citizens of Baltimore City, Baltimore, Prince George's, and Charles counties disproportionately high premiums. But, as he conceded, his chart did not contain any data relating to loss experience. Indeed, if residents of those counties encompassed in State Farm territories are charged comparatively high premiums and premium rates based exclusively on loss experience, it follows that State Farm's loss experience is disproportionately higher in those territories. Consequently, the ALJ's determination was supported by trial testimony, data, and State Farm's MIA certification, from which a reasonable person could conclude that higher loss ratios lead to higher rates.

D. Factual Finding [3.]: State Farm's Rates are Actuarily Justified

Davis alleges State Farm's rates are not actuarily justified. However, our review of the record reveals that he provided no evidence to support this assertion. In fact, Riggs-Richie testified that State Farm's rates are based strictly on actuarial factors. Her testimony was corroborated by State Farm's certification to the MIA, which averred that "[t]he use of the territories on file . . . are actuarily justified."

In the absence of any evidence that State Farm's rates are calculated using non-actuarial factors, Davis' allegations fail to satisfy the requisite burden of persuasion. Instead, Riggs-Richie's testimony and State Farm's MIA certification provided adequate evidence for the ALJ to find that State Farm's rates are actuarily justified. This Court concludes that there was sufficient evidence for a reasonable person to determine that State Farm's rates are actuarily justified.

III. The Agency's Decision Was Unaffected by Legal Error

Davis contends the ALJ committed four legal errors in its determination. First, Davis argues that the ALJ's framing of the issues in the Proposed Decision erroneously disregarded his arguments raised at the hearing. Second, Davis claims that the Commissioner violated COMAR 31.02.01.10-1G when he neglected to consider Davis' Exceptions to the Proposed Decision. Third, Davis claims that the Commissioner failed to consider the Reply before making his determination. Last, Davis contends that the "MIA exceeded the jurisdiction of the Commissioner" by violating IN § 2-202. We address each contention in turn.

A. The ALJ's Framing of the Issues

In the Proposed Decision, the ALJ presented the issues as follows:

1. Did the Licensee violate Maryland insurance law with respect to the increase in the Complainant's automobile policy premium effective March 8, 2016?

2. Does the Licensee's use of territorial or geographic considerations in setting its automobile insurance premiums violate Maryland insurance law?

Contrary to Davis' contention that the ALJ disregarded his arguments, the ALJ directly addressed the merits of his claims. In the ALJ's discussion of State Farm's use of territorial or geographic considerations, the ALJ expressly identified racial discrimination as violative of IN § 11-205(d)'s requirement that "rates . . . not be . . . unfairly discriminatory." The ALJ reasoned: "Racial discrimination is 'based upon something other than actuarial risk.'" If, therefore, State Farm had used geography as a surrogate for race—or for any non-actuarial reason, for that matter—it would clearly have violated IN § 11-205. However, as the ALJ noted:

> Neither the General Assembly, the Maryland Judiciary or the MIA have, to date, permitted a finding of unfair discrimination in the insurance setting to be based on a theory of adverse or disparate impact, absent proof that an insurer either intentionally racially discriminated or used geographic territory without regard to actuarial risk.

Finding no evidence in the record indicating intentional racial discrimination or non-actuarial considerations, the ALJ properly found that State Farm had not violated IN § 11-205. Davis' claim that the ALJ disregarded his argument is without merit.

B. The ALJ's Consideration of Exceptions

Davis further contends that the Commissioner neglected to consider his Exceptions to the Proposed Decision before issuing his final order in violation of COMAR 31.02.01.10-1G. When a party excepts to the proposed decision of an ALJ, COMAR 31.02.01.10-1G requires that the record before the Commissioner include:

> (1) The administrative law judge's findings and conclusions, including the findings of fact, conclusions of law, and proposed order;
> (2) Any exceptions filed by a party;
> (3) Any response to exceptions filed by a party;

> (4) Any evidence submitted by a party;
> (5) Notice to the parties of the hearing;
> (6) Any documentary evidence admitted into evidence by the administrative law judge; and
> (7) The transcript of the hearing before the administrative law judge, if requested and filed by one of the parties or the Commissioner.

COMAR 31.02.01.10-2B, in turn, requires that the Commissioner consider "the administrative law judge's proposed findings of fact, proposed conclusions of law, or proposed order, and any exceptions filed by the parties" before issuing a final determination. Absent any evidence to the contrary, we presume the Commissioner considers a party's exceptions. *Maryland Sec. Comm'r v. United States Sec. Corp.*, 122 Md. App. 574, 588 (1998) ("[I]n the absence of evidence to the contrary, administrative officers will be presumed to have properly performed their duties and to have acted regularly and in a lawful manner.").

Davis' argument is predicated on the assumption that the Commissioner would have rejected the ALJ's factual findings had he adequately considered Davis' exceptions. Given that the Commissioner adopted the ALJ's Proposed Decision, so Davis reasons, the Commissioner must have disregarded his exceptions. We find this argument unpersuasive.

The record in this case explicitly evinces that the Commissioner considered Davis' exceptions. In his Final Order, the Commissioner wrote: "The Complainant filed numerous Exceptions in response to the Proposed Decision. In his Exceptions, Complainant strongly expressed disagreement with the Proposed Decision because it appeared to be based solely on testimony of the Licensee." We conclude that the Commissioner complied with COMAR 31.02.01.10-1G & 10-2B in issuing his final order.

C. The ALJ's Consideration of Davis' Reply

Next, Davis claims that the Commissioner failed to consider his Reply.[14] The Commissioner filed the Final Order on June 7, 2017—five days before Davis filed the Reply. The Commissioner did not, therefore, have the opportunity to review the Reply before rendering his decision.

Pursuant to COMAR 31.02.01.10-1B, a party has twenty days after the issuance of a proposed order to file exceptions to it. COMAR 31.02.01.10-1G requires the record include, among other things, exceptions and responses to the exceptions. There is no provision in the applicable regulations for a reply to responses.

The ALJ filed the Proposed Decision on April 28, 2017. On May 17, 2017—nineteen days after the Proposed Decision was filed—Davis filed his exceptions. State Farm filed a response on June 5, 2017. The Commissioner filed the final determination adopting the Proposed Decision on June 7, 2017 and took into account Davis' exceptions—which were to address all issues and objections he had with the ALJ's Proposed Decision—and State Farm's response to the exceptions. While COMAR 31.02.01.10–1 does not address requirements for a reply to a response to exceptions, we conclude that Davis had an adequate opportunity to raise his concerns with the ALJ's Proposed Decision in his exceptions. We hold the Commissioner did not commit legal error by issuing the final order prior to Davis filing his reply to State Farm's response to Davis' exceptions.

[14] We note that Davis failed to include the Reply in his record extract. Making a complete and accurate record is the responsibility of the parties. Md. Rule 8-414(a).

D. Jurisdiction of the Commissioner

Davis claims that the MIA violated IN § 2-202(c) by failing to timely notify the CCR of his case and provide all relevant information.IN § 2-202(c) provides in part:

> (c) The Commissioner shall notify the Commission on Civil Rights of any hearing scheduled on a complaint about alleged discriminatory practices.
>
> (d) On request of the Commission on Civil Rights and unless the complainant objects, the Commissioner shall give the Commission on Civil Rights all information about any complaint about alleged discriminatory practices received by the Commissioner.

Any prejudice resulting from the MIA's initial failure to apprise the CCR of Davis' claim was cured by the circuit court's remand to the MIA and the MIA's notice to the CCR. In any event, Davis waived this issue when, in petitioning the circuit court to reopen his case, he "concur[red] with the MCCR decision" not to intervene. While IN § 2-202(c) requires that the Commissioner notify the CCR of alleged discriminatory practices, IN § 2-202(d) requires that the Commissioner furnish the CCR with "all information about alleged discriminatory practices" only upon request by the CCR. The record does not reflect that any such request was made. Any legal error arising from the Commissioner's initial failure to inform the CCR was remedied by the circuit court's remand.

For the foregoing reasons, we hold that there was sufficient factual basis to support the ALJ's factual conclusions, and that ALJ committed no legal error. We affirm the decision of the Circuit Court for Baltimore City.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.