

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
Insurance Division
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920

<hr/> PROVIDENCE AUTO BODY, INC.	:	
COMPLAINANT,	:	
	:	
v.	:	DBR No. 06-I-1134
	:	
ALLSTATE INSURANCE COMPANY,	:	
RESPONDENT	:	
<hr/>	:	

DECISION

Hearing Officer: Elizabeth Kelleher Dwyer

Hearing Held: April 16, 2008

Appearances: Jina Petrarca-Karampetsos, Esq. on behalf of the Complainant
Thomas A. Pursley, Esq. on behalf of the Respondent

I. INTRODUCTION

The above-entitled matter came before the Department of Business Regulation ("Department") as the result of a complaint filed by Providence Auto Body ("PAB") on behalf of Dennis D'Ambra ("D'Ambra") against Allstate Insurance Company ("Allstate"). The allegations were that in making arrangements for the repair of D'Ambra's vehicle, Allstate violated R.I. Gen. Laws § 27-29-4(15). A full evidentiary hearing was held. Witness testimony was taken from D'Ambra and Darlene Sczygiel ("Sczygiel") Allstate's claim representative. PAB introduced one document which was admitted as a full exhibit and Allstate introduced three documents which were admitted as full exhibits. Both parties filed post hearing closing statements and briefs.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws § 27-29-4, 42-14-16 and 42-35-9.

III. ISSUES

- 1) What transpired during the adjustment of the D'Ambra's claim?
- 2) Was the conduct established in conjunction with the above issue in violation of R.I. Gen. Laws § 27-29-4(15)?

IV. MATERIAL FACTS AND TESTIMONY

This matter concerns the interaction between D'Ambra and Allstate concerning the repair of D'Ambra's vehicle. It is undisputed that D'Ambra was involved in an automobile accident with an Allstate insured. It is also undisputed that D'Ambra took his vehicle to PAB for repair. The disputed facts are with regard to what occurred between D'Ambra, PAB and Allstate and the legal relevance of those facts.

R.I. Gen. Laws § 27-29-4(15) provides, in relevant part, as follows:

The following are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

...

(15) Requiring that repairs be made to an automobile at a specified auto body repair shop or interfering with the insured's or claimant's free choice of repair facility. The insured or claimant shall be promptly informed by the insurer of his or her free choice in the selection of an auto body repair shop. Once the insured or claimant has advised the insurer that an auto body repair shop has been selected, the insurer may not recommend that a different auto body repair shop be selected to repair the automobile. An auto body repair shop may file a complaint with the department of business regulation alleging a violation of this subdivision (15). Whenever the department of business regulation has reason to believe that an insurer has violated this subdivision (15), the department shall conduct an investigation and may convene a hearing. A complaint filed by an auto body repair shop must be accompanied by a statement written and signed by the insured or claimant setting forth the factual basis

of the complaint, and the insured or claimant must voluntarily appear and testify at any administrative proceedings on the complaint.

One issue that appears to be undisputed is that Sczygiel did not affirmatively inform D'Ambra of his right to select the auto body shop of his choice. Transcript of Hearing, page 20. This is an affirmative requirement of the statute and yet, although Sczygiel indicated that she had received training in the Rhode Island steering statute from Allstate, no evidence was provided to indicate that she informed D'Ambra of his free choice of auto body shop. Transcript of Hearing, page 51. Allstate's argument did not address this portion of the statute. With no contrary evidence, the Hearing Officer accepts D'Ambra's statement that he was not informed of his right to choose the repair facility. This fact, standing alone, is a violation of R.I. Gen. Laws § 27-29-4(15).

After being contacted by D'Ambra, PAB contacted Allstate and indicated that they had been hired to repair the vehicle. Transcript of Hearing, page 54. Sczygiel stated that the PAB representative told her that PAB did not have contact information for D'Ambra and Sczygiel asked that they obtain the information and give it to her. Transcript of Hearing, page 55. Sczygiel thereafter waited for PAB to provide the name and number and finally spoke to D'Ambra seven days later. Transcript of hearing, page 76. No testimony was offered with regard to how she obtained contact information for D'Ambra. By the time she spoke with D'Ambra she had already spoken with the Allstate insured with regard to how the accident occurred. Transcript of Hearing, page 76.

D'Ambra was contacted by Sczygiel seven days after she had spoken to PAB. Transcript of Hearing, page 57. Although Sczygiel had been told by PAB that they had been hired to repair the vehicle, Sczygiel did not mention that she had spoken to PAB. Rather, D'Ambra testified that when he indicated that he wanted the car repaired at PAB the

Allstate representative placed him on hold to “see if they’re one of our approved shops.”

Transcript of Hearing, page 19. Sczygiel testified that she told D’Ambra “...let me check if this is one of our direct repair shops so I can set up the method of inspection correctly.”

Transcript of Hearing, page 58. D’Ambra testified that she returned to the call and stated that PAB was not “approved.” Transcript of Hearing, pages 25-26. Sczygiel testified that she did not use the word “approved” but does agree that she told D’Ambra that PAB was not a direct repair shop. Transcript of Hearing, page 59.

D’Ambra again requested that the vehicle be appraised at PAB and Sczygiel indicated to him that it would be more expedient to have the appraisal conducted at a drive in call center. Transcript of Hearing, page 20. This information was repeated although D’Ambra indicated that he wanted the vehicle appraised at PAB. Transcript of Hearing, page 20. Sczygiel testified that she did not recall making such a suggestion. Transcript pages 95 and 110. She stated that she always refers claimants to drive in claim centers any time a vehicle was drivable even if the claimant has already selected a shop. Transcript of Hearing, pages 96 to 97. However, it was not her practice to do so when a vehicle was not drivable and she had been informed by PAB that the vehicle was not drivable. Transcript of Hearing, page 57. While Allstate claims that D’Ambra’s testimony on this issue is “suspect” they do not offer any reason why the hearing officer would disbelieve D’Ambra.¹

Sczygiel also testified to her actions after her conversation with D’Ambra. She spoke to PAB the same day as her conversation with D’Ambra and informed them that she was referring the claim for an appraisal. Transcript of Hearing, pages 80-81. She received

¹ Further along in the brief, Allstate indicates that D’Ambra’s credibility is impinged because he did not bring his car to the shop until a month after the accident. D’Ambra indicated in testimony that he owned more than one vehicle so he did not need the damaged vehicle for transportation. Transcript at pages 35 to

a call from PAB three days later and told them that Allstate had four days to set up the appraisal. Transcript of Hearing, page 81-82. The Allstate claim notes, however, indicate that PAB was not contacted by Allstate to set up the appraisal until five more days had passed (eight days after her conversation with D'Ambra) and the appraisal was not done for another seven days. Transcript of Hearing, pages 83-85.

D'Ambra eventually had his own carrier pay the loss and subrogate against Allstate. Transcript of Hearing, pages 88-89. PAB bases its allegation of a violation of R.I. Gen. Laws § 27-29-4(15) on these facts.

V. DISCUSSION

Allstate's position is that since there was no evidence that Sczygiel "did not identify another shop by name, did not recommend any other shop; and did not refer him to any other shop" that the statute could not have been violated. There is no question that Allstate could not recommend another shop after D'Ambra had stated that he had selected PAB. This is not, however, the only prohibition in the statute. R.I. Gen. Laws § 27-29-4(15) also prohibits "*...interfering with the insured's or claimant's free choice of repair facility.*"

The question for decision, therefore, is whether Allstate "interfered" with D'Ambra's free choice of auto body shop. The term "interfere" is not defined in the statute. Allstate proffers a definition of "interfere," which it attributes to the Merriam-Webster Dictionary, of "...to come into collision or be in opposition to; clash." PAB offers a definition, also attributed to the Merriam-Webster Dictionary, of "interpose in a way that hinders or impedes." The hearing officer has located a definition in the New Webster's Dictionary of the English Language, which provides "to come into opposition, as one thing with another,

36. It is unclear why this fact would cast dispersion on D'Ambra's testimony and the hearing officer finds

with the effect of hampering action; clash, obstruct or impede; to intervene or interpose in another's concerns, esp. intrusively or without warrant; to meddle..." Black Law Dictionary defines it as "To check; hamper; hinder; infringe; encroach; trespass; disturb; intervene; intermeddle; interpose."

Of course, not all of the words in these definitions apply in this particular use of the word "interfere" but many seem to indicate the legislatures intent including "hampering action", "impede" and "meddle." The intent of the legislature is that insurers not undertake actions that hamper repair by the shop of the customers' choice. In other words, without a legitimate business reason, an insurer may not take actions which make it more difficult to have the repair done at an auto body shop with whom the insurer does not have a contractual relationship. The nature of the consumer selecting his or her own shop may result in delays the consumer would not experience if they had selected a direct repair shop (e.g. the insurer must make an appointment to see the vehicle, the insurer may require an appraisal rather than an estimate, etc.) Those factors constitute legitimate business purposes and are not a violation of the statute. What is a violation is when the insurer takes an action or sets up a procedure with no legitimate business purpose and which makes getting the repair done at an independent shop more difficult.

In this case, Allstate insisted on speaking to the customer before even starting to make arrangements for the vehicle repair. Allstate did not offer any explanation as to why they could not have made arrangements for the appraisal concurrent with contacting the claimant especially since they had confirmed liability by speaking to their own insured.

that it does not.

Once Allstate reached the claimant, Sczygiel did not mention the contact by PAB. When D'Ambra mentioned it, Sczygiel put him on hold to determine whether PAB was "approved." At any point during the previous week Sczygiel could have checked the "status" of PAB to prepare herself for the point when she reached D'Ambra. However, she did not do so, kept the consumer on hold while she checked and then stated that PAB was not "approved" without explanation.

D'Ambra testified that when he told Sczygiel that he wanted the vehicle evaluated at PAB she recommended that he bring it to a drive in claim center. When he did not agree she mentioned it again and stated that it would be more efficient. She stated that it was always her policy, when the vehicle was drivable, to refer the claimant to a drive in claims center even if the claimant had selected his or her own shop. When he again rebuffed the suggestion Sczygiel agreed to contact PAB. Sczygiel stated that she did not recall making these statements and relied on her general principal of not referring to a drive in claim center if the vehicle was not drivable, which she believed from her conversation with PAB, as the basis for her denial that this portion of the conversation occurred. There is no reason to disbelieve D'Ambra on this issue and the hearing officer concludes that Sczygiel did make the referral to the drive in claim center after being informed of the selection of PAB.

Once Sczygiel spoke to D'Ambra it took another eight days to schedule the appraisal and an additional seven days for the appraisal to actually occur. Allstate did not present any evidence showing a reasonable explanation for these delays. In fact, the only evidence at all on this issue was Sczygiel's statement that PAB was a facility which required an "appointment" to inspect (testimony which was interesting considering that she previously testified that she knew nothing about PAB before this claim.) Allstate may claim that the

delay was not their fault, however, no evidence was presented that the delay was caused by PAB or D'Ambra.

The choice of an auto body shop is the customers. This Decision should not be interpreted to keep information from a consumer. This means that discussion of an insurers drive in claim center and/or a direct repair program is not in and of itself an indication of steering. However, when the customer indicates that he does not need or want that information, as D'Ambra did here, the conversation must stop. The customer has the right to simply choose a shop and have the shop "handle" the repair, as D'Ambra appears to have intended in this case.

Allstate took a number of actions which made it much more difficult for D'Ambra to have his vehicle repaired at PAB and it is the combination of all of these actions which leads to the violation of R.I. Gen. Laws § 27-29-4(15). These actions are (1) delayed arrangements for repair of the vehicle until she could locate and speak to the claimant; (2) placed the insured on hold while she determined whether PAB was an "approved" shop when she had plenty of time to make that determination before placing the call; (3) told the claimant that PAB was not "approved" without explanation (4) suggested that the claimant take his vehicle to a drive in claim center after he had informed her that he wanted his repair done at PAB and (5) delayed another fifteen days before the appraisal was completed. These actions taken together constitute "interfering" with the claimant's free choice of repair facility and are prohibited by R.I. Gen. Laws § 27-29-4(15).

VI. FINDINGS OF FACT

1. Allstate did not affirmatively inform D'Ambra of his right to select the auto body shop of his choice.

2. PAB contacted Allstate and indicated that they had been hired to repair the vehicle. Allstate waited for PAB to provide the name and number of the claimant and, when they did not, located the name and number themselves.

3. The claimant was contacted by Allstate seven days after Allstate had spoken to PAB.

4. Although Allstate had been told by PAB that they had been hired to repair the vehicle, Allstate did not mention to the claimant that they had spoken to PAB. When the claimant indicated that he wanted the car repaired at PAB the Allstate representative placed him on hold to “determine” whether PAB was on Allstate’s “approved” list. Allstate returned to the call and stated that PAB was not on the “approved” list without explaining what this meant.

5. The claimant again requested that the vehicle be appraised at PAB and Allstate indicated that it would be quicker to have the appraisal conducted at a drive in claim center. This information was repeated although the customer indicated that he was not interested in taking his vehicle to a drive in claim center.

6. After the conversation with the claimant it took another fifteen days for Allstate to appraise the vehicle.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented I conclude as follows:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. § 27-29-4, 42-14-1 *et seq.*, and 42-35-1 *et seq.*

2. Failure to affirmatively inform a claimant of his right to select the auto body shop of his choice is a violation of R.I. Gen. Laws § 27-29-4(15).

3. Allstate interfered with the claimants choice of shop in violation of R.I. Gen. Laws § 27-29-4(15) by (1) delaying arrangements for repair of the vehicle until the claimant could be located and spoken to; (2) placing the claimant on hold while determining whether PAB was an “approved” shop when the adjuster had plenty of time to make that determination before placing the call; (3) told the claimant that PAB was not “approved” without explanation (4) suggested that the claimant take his vehicle to a drive in claim center after he had informed the adjuster that he wanted the repair done at PAB and (5) delayed the appraisal at PAB another 15 days.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that

1. Respondent be found to have violated R.I. Gen. Laws § 27-29-4(15) by interfering with the consumers’ free choice of repair facility.
2. Respondent be ordered to cease and desist from engaging in any activities that violate R.I. Gen. Laws § 27-29-4(15).
3. Respondent be fined the sum of \$5,000 for this violation payable within thirty (30) days of the service of this Decision.

Dated: November 20, 2009



Elizabeth Kelleher Dwyer, Esq.
Hearing Officer

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby

ADOPT
 REJECT
 MODIFY

the Decision and Recommendation.



Dated: November 20, 2009

A. Michael Marques
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I.G.L. § 42-35-12. PURSUANT TO R.I.G.L. § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.