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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MONMOUTH COUNTY
DOCKET NO. MON-L-0557-14

KENNETH E. KOBYLOWSKI,)
COMMISSIONER, NEW JERSEY)
DEPARTMENT OF BANKING AND)
INSURANCE,)

Plaintiff,)

v.)

MICHAEL C. CAPONE,)

Defendant.)

Civil Action

STIPULATION OF SETTLEMENT
BFD# 12-51345-35

WHEREAS, the Plaintiff, Kenneth E. Kobylowski, Commissioner of the New Jersey Department of Banking and Insurance ("Commissioner"), and Defendant Michael C. Capone have reached an amicable agreement resolving the issues in controversy, and consented to the entry of the within Stipulation of Settlement; and

IT IS HEREBY STIPULATED AND AGREED, that Defendant Capone admits that, 1) on January 21, 2012, Defendant Capone called Progressive Garden State Insurance Company ("Progressive") to reinstate his automobile insurance policy and knowingly failed to disclose his recent involvement in a motor vehicle accident during a recorded interview with Progressive, when, in fact, he had been involved in a motor vehicle accident earlier that day; 2) on January 22, 2012, Defendant Capone filed a claim with Progressive, wherein he stated that the accident occurred on January 21, 2012 at 8:00 a.m., after reinstatement of his Progressive automobile insurance policy, when, in fact, the accident occurred at 7:20 a.m., while his coverage had lapsed; and 3) on January 23, 2012, Defendant Capone provided a false statement to Progressive during a second recorded interview, wherein he stated that the accident occurred on January 21, 2012 at 8:00 a.m., after reinstatement of his Progressive automobile insurance policy, when, in fact, the accident occurred at 7:20 a.m., while his coverage had lapsed, all in violation of the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -30 ("Fraud Act"); and

IT IS FURTHER HEREBY STIPULATED AND AGREED, that Defendant Capone's aforementioned conduct constitutes violations

of the Fraud Act by Defendant Capone, and that any future violation of the Fraud Act by Defendant Capone shall be considered a third or subsequent violation; and

IT IS FURTHER HEREBY STIPULATED AND AGREED, that Defendant Capone shall pay a sum of Three Thousand and Five Hundred Dollars (\$3,500.00) ("Settlement Amount") to the Commissioner, which consists of civil penalties in the amount of \$2,500.00, pursuant to N.J.S.A. 17:33A-5b; \$875.00 in attorneys' fees, pursuant to N.J.S.A. 17:33A-5b; and a statutory fraud surcharge of \$125.00, pursuant to N.J.S.A. 17:33A-5.1; and

IT IS FURTHER HEREBY STIPULATED AND AGREED, that, upon Defendant Capone's execution of this Stipulation of Settlement, Defendant Capone shall remit to the attorney for the Commissioner the full Settlement Amount, by certified check, official bank check, or money order, made payable to "Commissioner, New Jersey Department of Banking and Insurance" and sent to:

Adam B. Masef, Deputy Attorney General
Banking and Insurance Section
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 117
Trenton, New Jersey 08625-0117

IT IS FURTHER HEREBY STIPULATED AND AGREED, that, in conjunction with the execution of this Stipulation of

Settlement, and upon Defendant Capone's execution of this Stipulation of Settlement, Defendant Capone shall also pay restitution to Progressive in the amount of \$4,098.49, consisting of the \$4,073.00 Progressive paid to Jersey Central Power and Light for damage to the utility pole caused by Defendant Capone as a result of his accident, and \$25.49 in prejudgment interest owed on the principal sum of \$4,073.00 from the time period of July 25, 2012 to September 19, 2014; and

IT IS FURTHER HEREBY STIPULATED AND AGREED, that Progressive may use this Stipulation of Settlement to pursue collection of their restitution; and

IT IS FURTHER HEREBY STIPULATED AND AGREED, that proof of the restitution payment made to Progressive shall be provided by Defendant Capone to the Commissioner; and

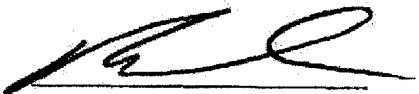
IT IS FURTHER HEREBY STIPULATED AND AGREED, that pursuant to N.J.S.A. 17:33A-10c, a copy of this Stipulation of Settlement shall be provided to any appropriate licensing authority.

IT IS FURTHER HEREBY STIPULATED AND AGREED, that, in the event full payment of the Settlement Amount is not made, the Commissioner may exercise any and all remedies available by law, including, but not limited to, recovery of any unpaid penalties

pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-10, et seq.; and

IT IS FURTHER HEREBY STIPULATED AND AGREED, that the penalties of this Stipulation of Settlement are imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and protection of the public health, safety, and welfare, and are not intended to constitute debts which may be limited or discharged in a bankruptcy proceeding.

CONSENTED AS TO FORM, CONTENT, AND ENTRY:

A handwritten signature in black ink, appearing to be a stylized name, possibly "R. L.", written over a horizontal line.

Dated: 2-17-15

Michael C. Capone
Defendant

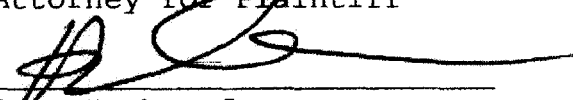


Philip Nettl, Esq.
Attorney for Defendant

Dated: 2/23/15

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

Dated: 3/2/15

By: 
Adam B. Masef
Deputy Attorney General