

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DOCKET NO.: BKI 07221-22
AGENCY DOCKET NO.: OCF22-22¹

JUSTIN ZIMMERMAN ² ,	)	
ACTING COMMISSIONER NEW JERSEY	)	
DEPARTMENT OF BANKING	)	
AND INSURANCE,	)	
Petitioner,	)	FINAL DECISION AND ORDER
	)	
v.	)	
	)	
MARIO FERMIN ZAVALA.	)	
Respondent	)	

This matter comes before the Commissioner of Banking and Insurance (“Commissioner”) pursuant to the authority of N.J.S.A. 52:14B-1 to -31, New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 to -89 (“RMLA”), and all powers expressed or implied therein, for the purposes of reviewing the October 20, 2023 Initial Decision (“Initial Decision”) of Administrative Law Judge Hon. Kimberly A. Moss (“ALJ”). The Initial Decision incorporated the Partial Summary Decision (“PSD”) issued on February 17, 2023, which granted the Department of Banking and Insurance’s (“Department”) motion for summary decision as to the statutory violations, but did not decide the amount of monetary penalties because there was an issue of fact

¹ The Initial Decision indicated that the agency docket number was not applicable. However, the Order to Show Cause number is OCF22-22. On the Partial Summary Decision, the ALJ indicated that the Agency Dkt. No. was 18-019066.

² Pursuant to R. 4:34-4, Acting Commissioner Justin Zimmerman has been substituted in place of former Commissioner Marlene Caride in the caption.

regarding the amount of the fine. In the Initial Decision, the ALJ recommended that Mario Fermin Zavala (“Respondent”) pay \$5,000 in civil penalties for the violations as alleged in Order to Show Cause No. OCF22-22 (“OTSC”).

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On May 25, 2022, the Department issued the OTSC against the Respondent which sought to revoke the Respondent’s mortgage loan originator (“MLO”) license and impose civil monetary penalties, for violations of RMLA. In the OTSC, the Department alleges that the Respondent engaged in the following activities in violation of the laws of this State:

Count One: Respondent fabricated documents in support of his mortgage application and submitted these fabricated documents to the mortgage lender, demonstrating incompetence, bad faith or dishonesty, in violation of N.J.S.A. 17:11C-70(a)(3)(f) and N.J.S.A. 17:11C-75(b).

On August 16, 2022, the Respondent filed an Answer and requested a hearing. The matter was transferred to the Office of Administrative Law (“OAL”) on August 22, 2022 pursuant to N.J.S.A. 52:14B-1 to -31 and N.J.S.A. 52:14F-1 to -23. Initial Decision at 2. On February 3, 2023, the Department moved for Summary Decision and Respondent filed opposition on February 13, 2023. Ibid. The ALJ granted partial summary decision on February 17, 2023 and found that the Respondent altered bank statements and knowingly submitted them to a lender to obtain a mortgage and recommended that the Respondent’s MLO license be revoked. PSD at 4. The remaining issue before the ALJ was the appropriate amount of administrative penalties. Ibid. The ALJ held a hearing on October 17, 2023 to gather evidence to determine the monetary penalties. Initial Decision at 2. The Initial Decision was issued on October 20, 2023 and the ALJ recommended that the Respondent be assessed \$5,000. Id. at 3.

THE ALJ'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

The ALJ found that in 2018 the Respondent and his wife applied for a mortgage with 1st Constitution Bank,³ where the Respondent was employed at the time. PSD at 2. In support of the mortgage application, the Respondent fabricated two bank statements by altering the beginning and ending balances. Ibid. 1st Constitution Bank approved the Respondent's mortgage application, but once it discovered that Respondent had fabricated these statements, it terminated Respondent's employment. Ibid.

The ALJ found that the Respondent was a loan officer for thirty-five years. Initial Decision at 2. The Respondent is married, and his wife is employed. Ibid. He has three children, one of which is in law school, and one attends college. Ibid.

The ALJ found that on August 15, 2014 the Respondent was diagnosed with stage three cancer. Initial Decision at 2; PSD at 2. In July 2021, he was diagnosed with a brain tumor. Initial Decision at 2. Surgery was successful and the Respondent relearned how to walk and talk. Ibid.

The Respondent presently works at Paramount Residential Mortgage Group ("PRMG") as a loan officer and sales manager. Initial Decision at 2; PSD at 2. He is licensed in all states, except New York. Initial Decision at 2. He works on commissions and his gross income in 2022 was \$145,312.48. Ibid. The ALJ found that his year-to-date gross income was \$49,000. Ibid. The Respondent owns three properties, one of which he resides at, and two are investment properties. Ibid.

³ The PSD refers to this institution as "First Constitution Bank" and the OTSC refers to it as "1st Constitutional Bank." However, the correct name is 1st Constitution Bank.

THE ALJ'S LEGAL ANALYSIS

The ALJ noted that the rules governing a motion for summary judgment in the OAL are found in N.J.A.C. 1:1-12.5(b) and mirror R. 4:46-2 and Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 75 (1954). PSD at 2. The ALJ noted that summary decision may be granted if “the papers and discovery which have been filed, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” Id. at 2-3 (citing N.J.A.C. 1:1-12.5(b)). The ALJ stated that for the nonmoving party to prevail, it must show that there is a genuine issue of material fact that can only be determined in an evidentiary hearing. Id. at 3.

The ALJ noted that the standard for summary decision is

a determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials present, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged dispute issue in favor of the non-moving party.

[Ibid. (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995) (additional citations omitted))].

The ALJ stated that under N.J.S.A. 17:11C-56, the Commissioner is to issue licenses to residential mortgage lenders or residential mortgage brokers if certain conditions are met. One of these conditions was that “the financial responsibility, experience, character, and general fitness of the person seeking licensure demonstrates that as a business licensee, the person will operate honestly, fairly, and efficiently within the purposes of this act.” PSD at 3 (quoting N.J.S.A. 17:11C-56(c)). Further, the ALJ stated that no “mortgage loan originator shall engage in any unfair or deceptive practice toward any person, or directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers, lenders, or any other person including any action to

misrepresent, circumvent, or conceal the nature of any information or material particular of any transaction...” Ibid. (quoting N.J.S.A. 17:11C-75(e)).

The ALJ found that the Respondent altered bank statements and knowingly submitted them to 1st Constitution Bank to obtain a mortgage. PSD at 4. This was deceptive and intended to mislead a lender and conceal the nature of information. Ibid. The ALJ found that the Respondent’s conduct violated N.J.S.A. 17:11C-56(c) and N.J.S.A. 17:11C-75(e). Ibid.

Penalties Recommended by the ALJ

The ALJ stated that under N.J.S.A. 17:11C-70a(3) the Commissioner may revoke a mortgage loan originator license if he finds, after a notice and opportunity to be heard, that the licensee has engaged in certain conduct. PSD at 4. The ALJ stated that the Commissioner may revoke a license if the licensee violated any provisions of RMLA, or any rule, regulation or order made pursuant to RMLA; or demonstrated unworthiness, incompetence, bad faith, or dishonesty in the transaction of business as a licensee; or engaged in any other conduct which would be deemed by the Commissioner to be cause of revocation. Ibid. (citing N.J.S.A. 17:11C-70a(3)(a), (f), (g)). The ALJ found that the Respondent demonstrated bad faith, dishonesty, and engaged in conduct that is cause for his licensed to be revoked when he knowingly submitted altered documents to secure a mortgage. Ibid. Accordingly, the ALJ recommended that the Respondent’s MLO license be revoked. Id. at 5.

The ALJ considered the appropriate monetary penalties in the Initial Decision. The ALJ noted that under RMLA, the Commissioner may impose a penalty of not more than \$25,000 on any person for violating the Act and each violation of the Act is considered a separate offense. Initial Decision at 3 (citing N.J.S.A. 17:11C-70(b)4).

The ALJ stated that there are seven factors for determining monetary penalties set forth in Kimmelman v. Henkles & McCoy, Inc., 108 N.J. 123, 137-39 (1987). Ibid. These factors include: (1) the good faith or bad faith of the Respondent; (2) the Respondent's ability to pay; (3) the amount of profits obtained from the illegal activity; (4) injury to the public; (5) duration of the illegal activity or conspiracy; (6) existence of criminal actions; and (7) past violations. Ibid.

The ALJ found that the Respondent showed bad faith in altering bank statements in order to secure a mortgage. Ibid. The ALJ found that the Respondent had the ability to pay a fine due to his income and investment properties. Ibid. The ALJ found that it was unclear whether the Respondent made any profit as a result of altering bank statements, other than securing a mortgage. Ibid. The ALJ found that the public was not harmed by the Respondent's altering bank statements. Ibid. Further, the duration of the violation was short-lived, and there are no criminal or treble damages actions pending against the Respondent. Ibid.

The ALJ noted that the maximum penalty was \$25,000. Ibid. The ALJ considered the factors at Kimmelman, and recommended that the Respondent be assessed \$5,000 in penalties. Ibid.

EXCEPTIONS

Under N.J.A.C. 1:1-18.4(a), the parties' Exceptions were due on or before November 2, 2023. On October 31, 2023, the Department indicated via letter that it had no exceptions to the Initial Decision. The Respondent submitted his exceptions on November 2, 2023. ("Respondent Exceptions"). The Department submitted its reply on November 7, 2023. ("Department Reply").⁴

⁴ The Respondent then filed a sur-reply to the Department's Response on November 9, 2023. Since applicable administrative rules do not permit a sur-reply, the Respondent's sur-reply filing was not considered.

Respondent's Exceptions

In his Exceptions, the Respondent states that when he bought a house in 2018, he altered a deposit on his bank statement from \$15,000 to \$5,000 because he could not explain a deposit in the amount of \$15,000. Respondent Exceptions at 1. He states that 1st Constitution Bank replaced the altered statement with the correct statement and “accompanied it with a strong explanation letter for the \$15,000 large deposit” and the loan was sold to a different servicer, where it has performed well. Ibid.

The Respondent states that this was the only transgression in his long career. Id. at 2. The Respondent argued that he altered a document relating to his own account, and would never alter a document related to a client's account. Ibid. The Respondent apologized for his conduct, and indicated it was out of character for him, as he does not believe in lying, but in being responsible and honest. Ibid.

The Respondent indicated that he was diagnosed with colon cancer in 2014 and underwent two surgeries. Ibid. He was then diagnosed with a brain tumor in 2021, and underwent surgery which left him paralyzed on the right side of his body. Ibid. He also lost his short-term memory and underwent therapy to regain the ability to walk, talk, and relearn basic information, such as colors and numbers. Ibid.

The Respondent asks that his license not be revoked. Ibid. He indicated that it would be financially catastrophic for his family, including two of his children who are pursuing higher education, if he were to lose his livelihood. Ibid. The Respondent indicates that he has lost out on \$60,000 in commissions from 1st Constitution Bank for loans that he had closed, incurred legal fees, spent money on a psychological profile, and lost approximately \$100,000 in commissions because he was unemployable “since there was a state investigation going on.” Id. at 2-3.

The Respondent asks that his MLO license not be revoked or suspended and that a financial penalty not be imposed. Id. at 3. He offers to have his license placed on probation, and “report to a state assigned monitor...” Ibid.

Department’s Reply

The Department avers that the Respondent did not challenge any of the ALJ’s findings of fact or conclusion of law. Department’s Reply at 2. Further, the Respondent admitted to altering bank statements when he applied for a personal mortgage. Ibid. (citing Respondent’s Exceptions at 1). The Department argues that in his Exceptions, the Respondent made irrelevant and unsupported statements that the mortgage performed well; he had medical issues; he lost out on commissions; and he spent money on a psychological evaluation and legal fees. Ibid. (citing Respondent’s Exceptions at 2-3).

The Department argues that the Respondent testified about these circumstances that he described in his Exceptions, but produced no evidence aside from a W-2 from 2022 which demonstrated a substantial income. Ibid. The Department argues that the ALJ considered these circumstances when she considered the Kimmelman factors and recommended a fine of \$5,000. Id. at 2-3.

The Department requested that the Commissioner adopt the PSD and the Initial Decision. Id. at 3.

LEGAL DISCUSSION

The Department bears the burden of proving the allegations in an Order to Show Cause by a preponderance of the competent, relevant, and credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as would lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958).

Preponderance may be described as: “the greater weight of credible evidence in the case not necessarily dependent on the number of witnesses, but having the greater convincing power.” State v. Lewis, 678 N.J. 47 (1975).

Allegations Against the Respondent

As stated by the ALJ, N.J.A.C. 1:1-12.5(b) provides the standard to determine whether summary decision should be granted in a contested case. Specifically, the provision states that a summary decision may be rendered “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” Ibid. The rule also provides that “when a motion for summary decision is made and supported, an adverse party, in order to prevail must, by responding affidavit, set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid.

I ADOPT the ALJ’s finding that there is no genuine dispute of material fact. Respondent admitted to altering bank statements. Respondent’s Responses to Petitioner’s Request for Admissions attached as Exhibit C to the Certification of Garen Gazaryan. Accordingly, summary decision is appropriate.

Count One

Count One of the OTSC alleges that the Respondent altered bank statements when he applied for a mortgage and submitted altered bank statements to 1st Constitution Bank in violation of N.J.S.A. 17:11C-70(a)(3)(f), which provides that the Commissioner may revoke a license if he finds that a licensee violated any provision of RMLA, and N.J.S.A. 17:11C-75(b), which prohibits people from obtaining or attempting to obtain a license by fraud or misrepresentation.

The ALJ found that the Respondent altered bank statements to obtain a mortgage in violation of two different statutory provisions. Specifically, the ALJ found that the Respondent violated N.J.S.A. 17:11C-56(c), which sets forth that the Commissioner is to issue licenses to residential mortgage lenders if he finds that the person demonstrates that he will operate honestly and fairly. Initial Decision at 2; PSD at 4. The ALJ also found that the Respondent violated N.J.S.A. 17:11C-75(e), which prohibits an MLO from engaging in deception toward lenders, including any action to misrepresent information related to any transaction when she granted the Department's motion for summary decision. Initial Decision at 2; PSD at 4.

In his Exceptions, the Respondent argued that when he bought a house in 2018, he altered a deposit on his bank statement from \$15,000 to \$5,000 because he could not explain a deposit in the amount of \$15,000. Respondent Exceptions at 1. The Respondent argued that he altered a document relating to his own account, and would never alter a document related to a client's account. Id. at 2.

I ADOPT the ALJ's finding that the Respondent altered bank statements to obtain a mortgage and violated N.J.S.A. 17:11C-75(e). The Respondent admitted that he altered a bank statement during discovery and in his Exceptions. Accordingly, I ADOPT the ALJ's finding that the Respondent violated N.J.S.A. 17:11C-75(e), which prohibits an MLO from engaging "in any unfair or deceptive practice toward any person, or directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers, lenders, or any other person including any action to misrepresent, circumvent, or conceal the nature of any information or material particular of any transaction..." The Respondent engaged in a deceptive practice when he altered bank statements that he submitted to 1st Constitution Bank, a lender, as part of a mortgage application. The Respondent altered information on his bank statements, which material related to a

transaction. It is irrelevant that it was his own bank statement for a personal mortgage, and not that of a client. The Respondent still misled a lender and misrepresented the nature of information or material relating to a transaction.

The OTSC does not allege a violation of N.J.S.A. 17:11C-75(e) and instead charges the Respondent with violating N.J.S.A. 17:11C-75(b), which prohibits people from obtaining or attempting to obtain a license by fraud or misrepresentation. There is no evidence that the Respondent obtained a license through fraud or misrepresentation, and it appears that the OTSC mistakenly charged Respondent with this violation. Pursuant to N.J.A.C. 1:1-6.2(a), “unless precluded by law or constitutional principle, pleadings may be freely amended when, in the judge’s discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice.” Defendants who are aware of the charges against them are not free to “lie in repose but are called upon to prepare and defend.” See Lawlor v. CloverLeaf Memorial Park, Inc. 56 N.J. 326, 339 (1970). Courts have broad discretion to liberally permit amendment of pleadings to conform to the evidence. Cuesta v. Classic Wheels, Inc., 358 N.J. Super. 512, 517 (App. Div. 2003). I find that amending the pleadings to charge that the Respondent violated N.J.S.A. 17:11C-75(e) rather than N.J.S.A. 17:11C-75(b) is appropriate to avoid technicalities that do not serve the interests of justice. The amendment does not create undue prejudice as Respondent was aware of the conduct he was being charged with. Amending the pleadings to charge the Respondent with the correct statutory citation does not allege new facts or allegations that the Respondent did not have the opportunity to defend himself against.

I REJECT the ALJ’s conclusion that the Respondent violated N.J.S.A. 17:11C-56(c). This provision sets forth that the Commissioner is to issue licenses to residential mortgage lenders or

residential mortgage brokers if he finds “that the financial responsibility, experience, character, and general fitness of the person seeking licensure demonstrates that as a business licensee, the person will operate honestly, fairly, and efficiently within the purposes of this act.” The Respondent did not violate this statute because the statute provides direction to the Commissioner, not to licensees.

PENALTY AGAINST THE RESPONDENT

Revocation of Respondent’s MLO License

The ALJ found that the Respondent demonstrated bad faith, dishonesty, and engaged in conduct that is cause for his license to be revoked when he knowingly submitted altered documents to secure a mortgage. PSD at 4. The ALJ recommended that the Respondent’s MLO license be revoked. Id. at 5.

In his Exceptions, the Respondent asks that his license not be revoked because it would be financially catastrophic for his family if he were to lose his livelihood. Respondent Exceptions at 2. He apologizes profusely for his conduct, and offers to have his license placed on probation and to submit to state monitoring. Id. at 2-3.

Pursuant to N.J.S.A. 17:11C-70, the Commissioner has the authority to revoke, suspend, or refuse to renew a license. Under N.J.S.A. 17:11C-70a(3)(a) the Commissioner may revoke a mortgage loan originator license if he finds, after a notice and opportunity to be heard, that the licensee violated any provision of RMLA. As noted above, the Respondent violated a provision of the RMLA, N.J.S.A. 17:11C-75(e), when he submitted bank statements that he had altered to 1st Constitution Bank as part of a mortgage application. Accordingly, I ADOPT the ALJ’s finding that it is appropriate to revoke the Respondent’s license under this provision.

Pursuant to N.J.S.A. 17:11C-70a(3)(f), the Commissioner may revoke a license if a licensee demonstrated “unworthiness, incompetence, bad faith or dishonesty in the transaction of business as a licensee.” The ALJ found that it was appropriate to revoke the Respondent’s license under this provision. PSD at 4. However, it is not clear from the record whether the Respondent was transacting business as a licensee when he applied for a mortgage from 1st Constitution Bank, who was also his employer. The Respondent admitted to altering bank statements when the parties engaged in discovery. Respondent’s Responses to Petitioner’s Request for Admissions attached as Exhibit C to the Certification of Garen Gazaryan. The mortgage application and supporting documents were not submitted as part of the Department’s motion for summary decision, and it is unclear what role the Respondent played, if any, in approving the mortgage. Accordingly, I REJECT the ALJ’s finding that the Respondent’s license may be revoked under this provision.

Pursuant to N.J.S.A. 17:11C-70a(3)(g), the Commissioner may revoke a license if the licensee engaged in any other conduct which would be deemed by the commissioner to be the cause for license revocation. As stated above, the Respondent engaged in dishonest conduct when he submitted altered bank statements to 1st Constitution Bank as part of his application for a mortgage. When it enacted RMLA, the Legislature found that the RMLA was necessary to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry operates free of unfair, deceptive, and fraudulent practices. N.J.S.A. 17:11C-52. Applicants must meet general character and fitness requirements for licensure, including honesty. N.J.S.A. 17:11C-57a(3). See also Adoff v. New Jersey Department of Banking and Insurance, OAL Dkt No. BKI-06558-17, Initial Decision (01/05/18), Final Decision and Order (04/04/18) (denying Adoff’s application for an MLO license on the grounds that he failed to demonstrate the requisite character and general fitness as set forth in N.J.S.A. 17:11C-57a(3), which are significant as MLOs act in a fiduciary

relationship with their clients). While the Respondent apologizes and offers to have his license placed on probation, this would not be sufficient to appropriately address the Respondent's conduct. Accordingly, I ADOPT the ALJ's finding that revocation of the Respondent's license is appropriate under this provision.

Monetary Penalty Against the Respondent

The Commissioner has broad discretion in determining sanctions for violations of the laws he is charged with administering. In re Scioscia, 216 N.J. Super. 644, 660 (App. Div. 1987). The Commissioner may levy penalties, not exceeding \$25,000, against any person per violation of RMLA. N.J.S.A. 17:11C-70(b)(4).

As stated by the ALJ, under Kimmelman, 108 N.J. at 137-139, certain factors must be examined when assessing administrative monetary penalties that may be imposed pursuant to RMLA.

The first Kimmelman factor addresses the good faith or bad faith of the Respondent. The ALJ found that the Respondent showed bad faith in altering bank statements in order to secure a mortgage. Initial Decision at 3. The Respondent admitted to altering a bank statement so that he would not have to explain a \$15,000 deposit. Respondent Exceptions at 1. I find that this factor weighs in favor of a higher monetary penalty.

The second factor in Kimmelman is the Respondent's ability to pay. Respondents who claim an inability to pay civil penalties bear the burden of proving their incapacity. The ability to pay is only a single factor to be considered in determining an appropriate fine and does not obviate the need for the imposition of an otherwise appropriate monetary penalty. The ALJ found that the Respondent had the ability to pay a fine due to his income and investment properties. Initial Decision at 3. The Respondent argues in his Exceptions that he has suffered financially from his

actions, including losing out on commissions from 1st Constitution Bank and when he was “unemployable” during the state investigation, incurring legal fees, and spending money on a psychological profile. Respondent Exceptions at 2-3. He also argues that he has a family including two children who are pursuing advanced degrees. Id. at 2. I agree with the ALJ that due to the Respondent’s investment properties and high 2022 income, he has the ability to pay a fine.

The third Kimmelman factor relates to the profits obtained. The greater the profits an individual is likely to obtain from illegal conduct, the greater the penalty must be if penalties are to be an effective deterrent. Kimmelman, 108 N.J. at 138. The ALJ found that it was unclear whether the Respondent made any profit as a result of altering bank statements, other than securing a mortgage. Initial Decision at 3. I agree with the ALJ that there is no evidence of any profits the Respondent may have obtained, and this factor is neutral.

The fourth Kimmelman factor addresses the injury to the public. The ALJ found that the public was not harmed by the Respondent’s altering bank statements. Initial Decision at 3. When it enacted RMLA, the Legislature was concerned with protecting the public from unscrupulous licensees. N.J.S.A. 17:11C-52. Further, RMLA requires that applicants for an MLO license demonstrate financial responsibility, character, and general fitness and will operate honestly, fairly, and efficiently. N.J.S.A. 17:11C-57(a)(3). Whenever a licensee engages in unscrupulous behavior, the public’s confidence is eroded. I find that this factor weighs in favor of a higher monetary penalty.

The fifth Kimmelman factor to be examined is the duration of the illegal activity. The Court in Kimmelman found that greater penalties are necessary to incentivize wrongdoers to cease their illegal conduct. Kimmelman, 108 N.J. at 139. The longer the illegal conduct, the more significant civil penalties should be assessed. Ibid. The ALJ found that duration of the violation

was short-lived. Initial Decision at 3. I agree with the ALJ that the duration was short, and this factor mitigates against a higher penalty.

The existence of criminal punishment and whether a civil penalty may be unduly punitive if other sanctions have been imposed is the sixth factor under the Kimmelman analysis. The Supreme Court held in Kimmelman that a lack of criminal punishment weighs in favor of a more significant civil penalty because the defendant cannot argue that he or she has already paid a price for his or her unlawful conduct. Kimmelman, 108 N.J. at 139. The ALJ found that there are no criminal or treble damages actions pending against the Respondent. Initial Decision at 3. I agree with the ALJ and find that this factor weighs in favor of a higher penalty.

The last Kimmelman factor addresses whether the Respondent had previously violated RMLA, and if past penalties have been insufficient to deter future violations. The ALJ did not address this factor. The Respondent avers that this is his first violation. Respondent Exceptions at 2. The Department did not present any evidence that the Respondent previously violated RMLA. Accordingly, I find that this factor mitigates against a higher penalty.

In light of the above Kimmelman analysis and based on the violation of RMLA, I ADOPT the ALJ's recommendation that the Respondent be assessed a monetary penalty of \$5,000.

These penalties are necessary and appropriate under the above Kimmelman analysis given the Respondent's conduct. The Respondent altered a bank statement to obtain a mortgage. It is irrelevant that it was his own bank statement for a personal mortgage, and not that of a client. The Respondent still misled a lender and misrepresented the nature of information or material relating to a transaction, which violated N.J.S.A. 17:11C-75(e). It is also irrelevant that he altered the statement to make it appear he made a smaller deposit, because he could not explain a larger deposit on his statement.

CONCLUSION

Having reviewed the Initial Decision and the record herein, I hereby ADOPT the Findings and Conclusions as set forth in Initial Decision, except as modified herein. Specifically, I ADOPT the ALJ's finding that the Respondent altered bank statements to obtain a mortgage and violated N.J.S.A. 17:11C-75(e). I REJECT the ALJ's conclusion that the Respondent violated N.J.S.A. 17:11C-56(c). I also ADOPT the ALJ's recommendation and hereby ORDER the revocation of the Respondent's MLO license. I ADOPT the recommendation of the ALJ and hereby ORDER the imposition of \$5,000 in penalties against the Respondent for violations of N.J.S.A. 17:11C-75(e).

It is so ORDERED on this 29th day of November 2023.

A handwritten signature in black ink that reads "Justin Zimmerman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Justin Zimmerman
Acting Commissioner

Jd Zavala FO/Banking Orders