

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DKT. NO.: BKI 0296-22
AGENCY DOCKET NO. OCF22-15

JUSTIN ZIMMERMAN,¹
COMMISSIONER,
Petitioner,

V.

ANTONIO AMBROSIO,
Respondent.

FINAL DECISION AND ORDER

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 July 8, Initial Decision (“Initial Decision”) of Administrative Law Judge Hon. Tama B. Hughes (“ALJ”).

The Initial Decision incorporates the September 6, 2023 Order Granting Partial Summary Decision (“PSD”) issued by the ALJ, which granted in part and denied in part a Motion for Summary Decision brought by the Department of Banking and Insurance (“Department”). In the PSD, the ALJ found for the Department and against Respondent Antonio Ambrosio (“Ambrosio”) on Counts One through Four as alleged in Order to Show Cause No. OCF22-15 (“OTSC”). The

¹ Pursuant to R. 4:34-4, Commissioner Justin Zimmerman has been substituted in place of former Commissioner Marlene Caride in the caption.

ALJ reserved her recommendation regarding the assessment of civil monetary penalties until a hearing could be held.

After a hearing on penalties, the ALJ recommended that Ambrosio be fined \$10,000 per Count, for a total of \$40,000. She further recommended that Ambrosio be barred from obtaining licensure as a mortgage loan originator.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On March 26, 2022,² the Department issued the OTSC against the Respondent which sought to revoke the Respondent's mortgage loan originator ("MLO") license³ 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: By directly taking a residential mortgage application, with an expired license, Respondent violated N.J.S.A. 17:11C-54(c)(1)(a), N.J.S.A. 17:11C-75(c), and N.J.S.A. 17:11C-75(d);

Count Two: By simultaneously acting as an unlicensed MLO, seller's agent, and the owner of the subject residential property, Respondent violated N.J.S.A. 17:11C-75(e);

Count Three: By cashing the consumer's earnest money deposit check, and failing to place said funds in an escrow or trust account immediately upon receipt, Respondent violated N.J.S.A. 17:11C-75(n), and N.J.S.A. 17:11C-75(e); and

Count Four: By failing to deliver the deposit, upon demand, without good cause, Respondent violated N.J.S.A. 17:11C-75(p), and N.J.S.A. 17:11C-75(e).

² The Initial Decision indicates that the OTSC was issued March 16, 2022, but this appears to be a typographical error.

³ Count One of the OTSC states that Ambrosio was once licensed as an MLO, but his license expired in 2010 and was not renewed. However, the Department indicated that was in error, and Ambrosio was never licensed as an MLO. Further, the Department indicated that the relief sought in the OTSC, that Ambrosio "appear and show cause why his expired MLO license should not be revoked..." was also in error. PSD at 3, FN 3.

On August 7, 2022, Ambrosio filed an Answer and requested a hearing. Initial Decision at 2. The matter was transferred to the Office of Administrative Law (“OAL”) on April 13, 2022, pursuant to N.J.S.A. 52:14B-1 to -31 and N.J.S.A. 52:14F-1 to -23. Ibid. On November 18, 2022, Ambrosio filed a Motion to dismiss,⁴ and oral argument was heard on December 14, 2022. Ibid. The ALJ denied Ambrosio's motion on December 28, 2022. Ibid.

On January 13, 2023, the Department moved for Summary Decision; Ambrosio filed opposition on May 23, 2023; and the Department filed its reply on May 25, 2023.⁵ Id. at 2-3. Oral argument was held on August 23, 2023, and the ALJ granted partial summary decision to the Department on September 6, 2023. Id. at 3. The ALJ granted partial summary decision to the Department on all counts except for a violation of N.J.S.A. 17:11-75(d) under Count One, which the Department dismissed by letter dated October 11, 2023. Ibid. The ALJ conducted a hearing regarding the appropriate penalty in this matter on May 23, 2024, at which time the record was closed. Ibid. The Initial Decision was issued on July 8, 2024, and the ALJ recommended that the Respondent be assessed a monetary penalty of \$40,000, and that he be prohibited from obtaining an MLO license. Id. at 9.

ALJ’S FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS

The ALJ’s Factual and Legal Findings

The ALJ stated 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.” PSD at 6 (quoting N.J.A.C. 1:1-12.5(b)). In order to prevail, the adverse party must “set forth specific

⁴ The Department filed opposition to Ambrosio’s Motion to Dismiss on November 23, 2022.

⁵ The Initial Decision indicates that the Department filed its reply on June 5, 2023, but this appears to be a typographical error. Initial Decision at 3.

facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid. (quoting N.J.A.C. 1:1-12.5(b)). When the evidence is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment. Ibid. (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 541 (1995)). “An evidentiary hearing is mandated only when the proposed administrative action is based on disputed adjudicatory facts.” Ibid. (quoting Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 120 (App. Div. 1995), certif. denied, 145 N.J. 372 (1996)).

The ALJ found that granting the Department partial summary decision was appropriate. Ibid. The ALJ found the following relevant facts in granting the Department’s Motion for Summary Decision.

Facts Relevant to All Counts

The ALJ found that Ambrosio was never licensed as an MLO. PSD at 3. Ambrosio worked for MLD Mortgage Inc./The Money Store (“MLD”), from August 11, 2015 through August 16, 2016, as the business development manager. Ibid. Ambrosio’s job responsibilities included recruiting, screening candidates, and making recommendations for potential placements. Ibid.

The ALJ found that on or about February 3, 2016, a residential loan application (“Application”) was submitted to MLD by RM and MM (collectively, “Buyers”) for the purchase of real property located on Locust Avenue in Lindenwold, New Jersey (“Property”). Ibid. The MLO listed on the Application was Corey J. Scandin (“Scandin”).⁶ Ibid.

⁶ The Department states that the Buyers did not have any communication with Scandin. Certification of Troy Dayton in support of Motion for Summary Decision, ¶ 6. The text messages between MM and Ambrosio do not mention Scandin. Certification of Troy Dayton in support of Motion for Summary Decision, Ex. 5. There is no statement from the Buyers contained in the record. An e-mail from Troy Dayton to a representative of MLD dated November 7, 2016 states that “The [Buyers] have since indicated that that they had never dealt directly with Cory Scandin...” Certification of Troy Dayton in support of Motion for Summary Decision, Ex. 8. The

The ALJ found that the Property was titled to Century Real Estate Investments (“Century Investments”). Id. at 4. Ambrosio is a principal of Century Investments and had full authority to represent the interest of the Property, including but not limited to selling the Property on behalf of Century Investments. Ibid. Ambrosio’s father-in-law, Gervasio Misseri (“Misseri”), is also a principal of Century Investments. Ibid.

The ALJ further found that on March 10, 2016, an Agreement of Sale (“Agreement”) was entered into by and between the Buyers and Ambrosio as the seller, for the purchase of the Property. Ibid. There was no mention or disclosure in the Agreement that Ambrosio was a principal of Century Investments, which owned the Property. Ibid. No deposit monies were required under the Agreement. Ibid.

The ALJ found that over the course of the next three or four months, the Buyers reached out to Ambrosio via text messages approximately eighty-nine times, and Ambrosio responded approximately sixty times. Ibid. The content of the text conversations included questions regarding the home inspection and report, the closing date and time, amount of money needed to close, pre-approval letters for other properties, amount of credit the Buyers could get, requests for a refund of the deposit money, and for a letter to cancel the homeowner’s insurance. Ibid.

Count One

The ALJ stated that the Department alleged in Count One of the OTSC that Ambrosio took a residential loan application while his MLO license was expired in violation of N.J.S.A. 17:11C-54(c)(1)(a), N.J.S.A. 17:11C-75(c), and N.J.S.A. 17:11C-75(d). Id. at 7.

The ALJ stated that an MLO is defined as:

e-mail also states that Ambrosio “collected numerous financial materials and application information/statements via e-mail from [the Buyers.]” Ibid. The record does not contain any of these e-mails.

any individual, not exempt under section 5 [C.17:11C-55] of this act and licensed pursuant to the provisions of this act, and any individual who should be licensed pursuant to the provisions of this act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly takes a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan.

Ibid. (quoting N.J.S.A. 17:11C-53).

The ALJ found that it was undisputed that Ambrosio stood in the shoes of the seller of the Property—Century Investments. Id. at 12. Further, from the time the loan application was submitted, Ambrosio interacted with the Buyers multiple times over the ensuing months. Ibid. Ambrosio handled the home inspection, fielded questions surrounding the status of the home inspection report, provided the closing date, responded to how much money was needed at closing, obtained pre-approval letters for other properties, answered credit questions, and responded to multiple requests for the refund of deposit monies. Ibid.

The ALJ found that when considering the definition of an MLO as it relates to Ambrosio's actions, it was evident that Ambrosio acted in that capacity and/or assisted, aided, or abetted a licensee with respect to the licensed activities as regulated under the Act. Ibid. Ambrosio continued to be intimately involved in moving the Application forward and was a primary contact at MLD. Ibid. Ambrosio's role in this transaction went well beyond that of a business development manager. Id. at 13.

The ALJ found that that Ambrosio violated N.J.S.A. 17:11C-54(c)(1)(a), which prohibits individuals from acting as an MLO without first obtaining a license, and N.J.S.A. 17:11C-75(c), which prohibits individuals from assisting, aiding, or abetting a licensee with respect to any licensed activities, unless that person is licensed. Ibid.

The ALJ determined that there were insufficient facts to support a finding as to whether the Respondent violated N.J.S.A. 17:11C-75(d), which prohibits an MLO from making any statement that is false, misleading, or deceptive.⁷ Ibid.

Count Two

The ALJ stated that the Department alleged in Count Two of the OTSC that by simultaneously acting as an unlicensed MLO, a seller's representative,⁸ and the owner of the Property, Ambrosio violated N.J.S.A. 17:11C-75(e). Ibid.

The ALJ found that the Buyers were aware that Ambrosio had an interest in the Property, as they gave him a check in the amount of \$3,900 as "deposit monies", which Ambrosio cashed before the Agreement was signed and the Application filed. Id. at 14. The ALJ stated that it did not appear to be a coincidence that the Buyers filed the Application at MLD where Ambrosio was employed. Ibid. Further, there was no disclosure of Ambrosio's conflict of interest to the Buyers or MLD during any part of the transaction. Ibid.

The ALJ found that Ambrosio's conduct in acting as an MLO without a license while simultaneously acting as the sellers' representative created a direct conflict of interest which was deceptive and misleading to both MLD and the Buyers. Id. at 14-15. Ambrosio acted as the primary point of contact for the Buyers regarding repairs on the Property and the processing of their loan. Id. at 15. Further, Ambrosio signed the Agreement as the seller, and there was no

⁷ As stated above, the Department dismissed this violation by letter dated October 11, 2023.

⁸ The OTSC, PSD, and the Initial Decision all use the word "agent." This term can be confusing and may be conflated with a real estate licensee who is contracted to sell a property. There is no evidence in the record that Ambrosio is licensed as a real estate salesperson. Further, Tara Biue of Keller William Realty in Sewell, New Jersey represented both the seller and the buyers. Dayton Cert. Ex. 4, DOBI 0102. This Final Decision and Order will use the term "representative" to describe Ambrosio's relationship to Century Investments, the seller.

indication that he was signing on behalf of Century Investments as a principal. Id. at 17. However, he also held himself out as someone to had authority to legally bind Century Investments and handle financial transactions. Ibid. The ALJ found that Ambrosio held dual roles which were in direct conflict with one another, none of which were disclosed. Ibid.

The ALJ concluded that Ambrosio violated N.J.S.A. 17:11C-75(e), which prohibits licensees from engaging in unfair or deceptive practices, defrauding or misleading borrowers, lenders, and concealing information related to any transaction. Id. at 15.

Count Three

The ALJ stated that the Department alleged in Count Three of the OTSC that by cashing the consumer's earnest money deposit check, and failed to place said funds in an escrow or trust account immediately upon its receipt, Ambrosio violated N.J.S.A. 17:11C-75(n) and N.J.S.A. 17:11C-75(e). Ibid.

The ALJ found that one week after filing the Application, the Buyers gave Ambrosio a check in the amount of \$3,900 made out to Century Investments. PSD at 3, 17-18. Ambrosio, as a principal of Century Investments, cashed the check the same day. Id. at 3-4. While no deposit monies were required under the Agreement, Ambrosio deemed the \$3,900 as a deposit towards the purchase price of the Property. Id. at 4. The parties understood that this deposit was to be used for repairs, and the Buyers would be credited for it at settlement. Id. at 17-18. At no time either upon receipt or after the execution of the Agreement, was the \$3,900 placed in escrow or a trust account. Id. at 4, 18.

The ALJ concluded that Ambrosio violated N.J.S.A. 17:11C-75(n), which requires licensees to place money in a trust or escrow account, and N.J.S.A. 17:11C-75(e), which prohibits

licensees from engaging in unfair or deceptive practices, defrauding or misleading borrowers, lenders, and concealing information related to any transaction. Id. at 18.

Count Four

The ALJ stated that the Department alleged in Count Four of the OTSC that by failing to deliver the deposit, upon demand, without good cause, Ambrosio violated N.J.S.A. 17:11C-75(p) and N.J.S.A. 17:11C-75(e). Id. at 15-16.

The ALJ found that settlement on the Property was scheduled on April 22, 2016. PSD at 5. However, the deal fell through the day prior to the scheduled settlement date through no fault of the Buyers. Ibid. The Buyers then sent at least 21 texts to Ambrosio requesting their \$3,900 be returned. PSD at 5, 18. Ambrosio assured them that he would request it, that the check was going to be mailed, and that he would personally pick up the check. Id. at 5. The Buyers then retained counsel who sent a demand letter dated June 24, 2016, to Ambrosio and other parties, for the return of the \$3,900. Ibid. On September 27, 2016, the Buyers filed a complaint with the Department regarding Ambrosio's failure to return the deposit monies. Ibid. A check dated September 4, 2016, in the amount of \$3,900, was sent to the Buyers on the personal account of Misseri. Ibid.

The ALJ concluded that Ambrosio violated N.J.S.A. 17:11C-75(n), which requires licensees to place money in a trust or escrow account, and N.J.S.A. 17:11C-75(p), which requires licensees to deliver any funds entrusted to them by others promptly and prohibits them from withholding or misappropriating funds. Id. at 18.

Ambrosio's arguments regarding res judicata and collateral estoppel

The ALJ stated that the Respondent argued that the doctrines of res judicata and collateral estoppel are applicable because the Department filed a complaint against another entity, MLB

Residential Lending, LLC (“MLB”) in 2018 or 2019. Id. at 8. MLB was charged with allowing its employees, including Ambrosio who was named in the complaint,⁹ to act as MLOs without being licensed. Ibid.

The ALJ stated that Ambrosio argued that res judicata and collateral estoppel apply because the conduct alleged in the MLB matter, where his name appears, is identical to what is charged in this matter, the MLB matter was resolved, and a penalty was paid. Ibid. Further, the investigator in this matter also investigated the MLB action, and therefore there is privity between the parties. Ibid.

The ALJ noted that “there are important goals to be achieved from the prudent and selective application” of collateral estoppel (issue preclusion) and res judicata (claim preclusion) “in administrative proceedings.” Id. at 9 (quoting Hackensack v. Winner, 82 N.J. 1, 31 (1980)). Benefits that flow from a proper application of these doctrines include “finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness.” Ibid. (quoting Hennessey v. Winslow Twp., 183 N.J. 593, 599 (2005) (additional citations omitted)).

The party seeking to invoke collateral estoppel must demonstrate that:

(1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgement; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding. Ibid. (quoting First Union Nat’l Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 352 (2007) (additional citations omitted)).

⁹ While the ALJ indicates that the Department filed a complaint against MLB, no complaint was submitted as part of the record. However, the Department entered into Consent Order No. E18-019159 with MLB Residential Lending, LLC and Samuel P. Lamparello, CEO on June 3, 2019. Ambrosio is named on page 2 of the Consent Order. Opposition to Department’s Motion for Summary Decision dated May 23, 2023, Ex. A; Certification of Chandra M. Arkema in Support of Motion for Summary Decision ¶26, Ex. G.

Even if all the elements are satisfied, “collateral estoppel is a flexible doctrine and not a rigid command.” Id. at 10 (citing In re Tanelli, 194 N.J. Super. 492, 497 (App. Div. 1984) (additional citations omitted)).

The ALJ found that Ambrosio failed to meet any of the elements. The issue in the present matter stems from a 2016 transaction wherein Ambrosio is accused of, among other things, acting as an MLO in a specific transaction, without the appropriate licensure. Id. at 10. The issue in the MLB matter was that MLB allowed certain employees in 2018, which included Ambrosio, to act as MLOs without the appropriate licensure in violation of N.J.S.A. 17:11C:54(c)(1)(a). Ibid. Ambrosio was not a party to this action, rather MLB and its CEO, Samuel P. Lamparello (“Lamparello”), were named as respondents. Ibid. The ALJ found that “the statutory violation was the same” but there was a different set of facts. Ibid.

Further, the ALJ found that the issue was not litigated, it was settled by Consent Order No. E18-019159 (“CO”) between the Department and MLB and Lamparello, and there was no adjudication on the merits. Ibid. The ALJ further found that the issues in the MLB matter are different from the one in the present matter. Ibid. Unlike the instant matter where Ambrosio is charged with acting as an MLO in a specific transaction without being properly licensed to do so, the MLB matter involved the company allowing its employees, one of whom was Ambrosio, to act as MLOs without being licensed. Ibid.

The ALJ also found that there was no privity between the parties. While the definition of privity is imprecise, it “is merely a word used to say that the relationship between the one who is a party on the record and another is close enough” such that application of collateral estoppel is warranted. Id. at 11 (quoting Zirger v. General Accident Ins. Co., 144 N.J. 327, 338 (1996) (additional citations omitted)). “A relationship is usually considered ‘close enough’ only when the

party is a virtual representative of the non-party, or when the non-party actually controls the litigation.” Ibid. (quoting Zirger, 144 N.J. at 338-339 (additional citations omitted)).

The ALJ found that the Department brought an action against MLB, and later brought a separate action against Ambrosio. Ibid. Ambrosio was not a party to the action against MLB, and he was not in privity with MLB or Lamparello. Ibid. He was only an employee mentioned in the CO. Ibid. Further, he was no longer employed at MLB at the time the parties entered into the CO, and he did not receive the CO until after the OTSC in this matter was filed. Ibid.

The ALJ also found that this matter did not meet the standard of res judicata. The ALJ stated that “the doctrine of res judicata bars relitigating claims when three conditions are met: (1) there was a final judgment on the merits; (2) the prior suit involved the same parties or their privies; and (3) the subsequent suit is based on the same transaction or occurrence.” Id. at 11-12 (quoting Maiden v. N. Brunswick Twp. Sch. Dist., Docket No. 19-18768 (App. Div. June 30, 2020) (slip op. at 8)). The ALJ reiterated that there was no final judgment on the merits, Ambrosio was not a party to the MLB matter and was not in privity to the parties in that matter, and the MLB matter involved a different set of facts and occurred at a different time. Id. at 12. Accordingly, the ALJ concluded that both the doctrines of res judicata and collateral estoppel are inapplicable to this matter. Ibid.

Penalties Recommended by the ALJ

The ALJ stated that the Commissioner may impose a penalty of not more than \$25,000 on any person for each violation of RMLA and may also impose restitution to any person aggrieved by the violation. Initial Decision at 3 (citing N.J.S.A. 17:11C-70(b)(4), (6)).

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 as to the first factor, Ambrosio acted in bad faith. Id. at 5. Ambrosio's responsibilities at MLD were to recruit, screen candidates, and make recommendations for potential placements. Ibid. He was not hired to, nor was he licensed to, perform the duties of an MLO, as he did here. Ibid. He was also a principal of Century Investments, who owned the Property. Ibid. He executed the agreement of sale for the Property and was involved in the loan application process at MLD, as evidenced by the approximately eighty-nine text messages between himself and the Buyers, much more communication than just "reassuring" a buyer going through the loan process. Ibid. There was neither formal disclosure of his relationship as the seller to either the Buyers or MLD. Ibid. Further, he immediately cashed the Buyers' deposit check and did not deposit it into an escrow or trust account. Id. at 6. When the deal fell through, and the Buyers requested their money be returned, Ambrosio gave unresponsive and evasive answers regarding when the money would be returned. Ibid. The ALJ concluded that Ambrosio acted in bad faith. Ibid.

The ALJ found that as to the second factor, Ambrosio's ability to pay, the Department was neutral and submitted no evidence regarding Ambrosio's ability to pay a fine. Ibid. Ambrosio argued that he cannot personally pay a fine. Ibid. He has three children, and his wife is the primary income earner. Ibid. The ALJ found that no proofs were submitted to support or refute Ambrosio's position that he is unable to pay a fine. Ibid.

The ALJ found that as to the third factor, the profits obtained, that Ambrosio took the Buyers' check and immediately cashed it before the Application and Agreement were signed.

Ibid. Ambrosio never deposited the money into an escrow account. Id. at 6-7. After the deal fell through and the Buyers demanded the return of the funds, Ambrosio responded with “placating platitudes” and the funds were eventually repaid by his father-in-law. Id. at 7. The ALJ concluded that Ambrosio profited from his conduct and this factor dictated a higher penalty. Ibid.

The ALJ found that as to the fourth factor, injury to the public, the public was injured as a result of Ambrosio’s conduct. Ibid. The Buyers were injured by the lack of transparency and the delay in having their deposit returned. Ibid. Further, Ambrosio’s actions hurt the public as a whole. Ibid. His actions “bypassed the checks and balances” in place under RMLA related to required licensure and also affected consumer confidence in the mortgage industry. Ibid. The ALJ concluded that this factor warranted a higher penalty. Ibid.

The ALJ found that as to the fifth factor, the Department conceded that the incident involved one consumer over a short period of time, and the Respondent argued that the duration was short, as the deposit was made in February, the deal fell through in May, and the deposit was returned in August. Id. at 8. However, the ALJ found that the violation lasted several months, and Ambrosio violated RMLA “from the start.” Ibid. The ALJ concluded that that this factor weighed in favor of a higher penalty. Ibid.

As to the sixth factor, the existence of criminal actions and whether a civil penalty may be unduly punitive if other sanctions have been imposed, the ALJ found that Ambrosio has not faced any criminal or treble damages actions. Ibid. The ALJ concluded that the imposition of a civil penalty would not be unduly punitive. Ibid.

The ALJ next considered the seventh factor, past violations. The ALJ found that although Ambrosio had been named in the CO between the Department and MLB as an employee who engaged in unlicensed activity, the ALJ found that he was not individually named as a party, and

did not have the benefit of due process in that matter. Id. at 9. The ALJ concluded that Ambrosio did not have any past violations. Ibid.

The ALJ further found that there were no mitigating factors. Ibid.

After weighing the Kimmelman factors, the ALJ concluded that a civil penalty in the amount of \$10,000 per count, for a total of \$40,000 was appropriate. Ibid.

The ALJ stated that under N.J.S.A. 17:11C-70 the Commissioner may deny, suspend, revoke, refuse to renew, or bar any license issued under RMLA. Id. at 3. The ALJ stated that in its moving papers and during oral argument, the Department sought to permanently bar Ambrosio from acting as a residential mortgage lender, a mortgage broker, an MLO or a stockholder, an officer, director, partner, or other owner, or an employee of a licensee, or acting in any capacity pursuant to RMLA. Id. at 3, 9 (citing N.J.S.A. 17:11C-70(b)(5)). However, the ALJ found that the OTSC, the “controlling document”, only sought to permanently bar the respondent from obtaining an MLO license, pursuant to N.J.S.A. 17:11C-70(b)(5), and this was the only relief available, aside from a monetary penalty. Id. at 9. The ALJ concluded that after analyzing the Kimmelman factors, that it was appropriate to permanently bar Ambrosio from obtaining an MLO license. Ibid.

EXCEPTIONS

Pursuant to N.J.A.C. 1:1-18.4(a), exceptions were due on July 18, 2024. The Department filed timely exceptions on July 18, 2024. The Respondent did not file exceptions or a reply to the Department’s exceptions.

Department Exceptions

The Department first noted the errors within the Procedural History as set forth in the Initial Decision. Department Exceptions at 2. The Department stated that the Initial Decision

referred to the Commissioner as the Petitioner in this matter, but the Department is the petitioner. Ibid. The Department also stated that the personnel prosecuting administrative matters for the Department “scrupulously maintain an ethical wall from the person writing the final decision, the Commissioner.” Ibid.

The Department also indicated that the Initial Decision mistakenly stated that: the OTSC was filed on March 26, 2022, when it was filed on March 16, 2022; omitted that the Department filed opposition to Ambrosio’s Motion to Dismiss on November 23, 2022; mistakenly stated that the Department filed its Motion for Summary Decision on January 23, 2023 when it actually filed the motion January 13, 2023; and that the Department filed its reply brief on June 5, 2023, when the Department filed its reply brief on May 25, 2023. Ibid.

The Department next requested that the OTSC be conformed to the proofs and that Ambrosio should be subject to a broader permanent bar from working in the mortgage industry under N.J.S.A. 17:11C-70(b)(5), a more stringent bar than that the ALJ ordered. Id. at 2-5.

The Department argues that the OTSC contained language regarding a possible permanent bar from the mortgage industry against Ambrosio. The Department states that the OTSC reads,

WHEREAS, pursuant to N.J.S.A. 17:11C-70(b)(5), the Commissioner may order that any person who has been found to have knowingly violated any provisions of the Act, or of the rules and regulations issued pursuant hereto¹⁰, and has thereby caused financial harm to consumers, be barred from acting as a residential mortgage lender, residential mortgage broker, or mortgage loan originator, or a stockholder, an officer, director, partner or other owner, or any employee of a licensee, or acting in any other capacity pursuant to the Act.
Id. at 3 (quoting OTSC at 4).

However, the OTSC ordered Ambrosio to appear and show cause why he should not be permanently barred “from obtaining a mortgage loan originator license, pursuant to N.J.S.A.

¹⁰ This is likely a typographical error and should read “thereto.”

17:11C-70(b)(5).” Ibid. (quoting OTSC at 6). The Department stated that the ALJ held the narrower language against the Department and ordered only that Ambrosio be barred from holding an MLO, rather than be subject to the more expansive language quoted on page 4 of the OTSC. Ibid.

The Department argued that the “proofs in this case provide authority for the Commissioner to order the broader bar.” Ibid. The Department stated that courts have broad discretion to liberally permit amendment of pleadings to conform to the evidence. Ibid. (citing Cuesta v. Classic Wheels, Inc., 358 N.J. Super. 512, 517 (App. Div. 2003)). Further, the Department stated that under N.J.A.C. 1:1-6.2(a), “[u]nless precluded by law of 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.” Ibid. The Department argues that prior Commissioners have permitted such amendments. Ibid. (citing Commissioner v. Furman, OAL Dkt. No. BKI 3891-06, Initial Decision (06/21/07), Final Decision and Order (09/17/07); Commissioner v. Citron, OAL Dkt. No. BKI-17272-15, Initial Decision (12/21/18), Final Decision and Order (05/06/19), Commissioner v. Charles, OAL Dkt. No. BKI-06530-14, Initial Decision (03/02/15), Final Decision and Order (08/28/15)).

The Department argues that while the full language of N.J.S.A. 17:11C-70(b)(5) was not fully reiterated on page 6 of the OTSC, the potential for the broader bar was communicated to Ambrosio on page 4 of the OTSC. Id. at 4. The Department argues that Ambrosio’s conduct necessitates the broader bar, because he never held an MLO license, but engaged in unlicensed activities at two different companies. Ibid. (citing PSD at 3, 8). The Department states that a prohibition against Ambrosio obtaining an MLO license is “meaningless.” Ibid.

The Department argues that conforming the OTSC would be in the interests of efficiency, expediency, avoiding overly-technical pleading requirements, and does not prejudice Ambrosio. Ibid. Accordingly, the Department requests that the Final Order consider the OTSC “to fully articulate the broader permanent bar the Department could (and does) seek under N.J.S.A. 17:11C-70(b)(5), in conformance with the fuller recitation on page 4 of the OTSC.” Ibid.

The Department states that N.J.S.A. 17:11C-70(b)(5) authorizes the Commissioner to bar anyone who has been found to have knowingly violated any provision of RMLA, and has thereby caused financial harm to consumers, from acting as an employee of a licensee or acting in any other capacity. Ibid. The ALJ recognized that Ambrosio acted as an unlicensed MLO, created a direct conflict of interest, and also acted as an unlicensed MLO when he was employed by MLB. Id. at 5 (citing PSD at 10, 14-15). The Department argues that given Ambrosio’s pattern of acting as an unlicensed MLO the broader bar preventing him from acting as a residential mortgage lender, residential mortgage broker, or mortgage loan originator, or a stockholder, an officer, director, partner or other owner, or any employee of a licensee is warranted. Ibid. (citing N.J.S.A. 17:11C-70(b)(5)).

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).

As noted 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 “[w]hen 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.

The ALJ found that the Respondents failed to adduce evidence that would create a genuine issue as to any material fact and that summary decision is appropriate as to the allegations contained in Counts One through Four of the OTSC and I ADOPT this finding.

Res Judicata and Collateral Estoppel

Collateral Estoppel

Collateral estoppel, or issue preclusion, is a “branch of the broader law of res judicata which bars relitigation of any issue which was actually determined in a prior action.” Ibid. “When a controversy between parties is once fairly litigated and determined it is no longer open to relitigation.” Culver v. Ins. Co. of N. Am., 115 N.J. 451, 460 (1989). “[P]rinciples such as res judicata and collateral estoppel . . . apply not only to parties in courts of law, but also in administrative tribunals and agency hearings, particularly as to findings of fact.” Hackensack v. Winner, 162 N.J. Super. 1, 24 (App. Div. 1978), modified on other grounds, 82 N.J. 1 (1980). (citations omitted).

For collateral estoppel to apply, the party asserting the bar must demonstrate that:

(1) the particular issue to be precluded is identical to the issue decided in the previous proceeding; (2) the issue was actually litigated in the prior action, i.e.,

there was a full and fair opportunity to litigate the issue in the prior action; (3) a final judgment on the merits was issued in the prior proceeding; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom preclusion is asserted was a party to or in privity with a party to the earlier proceeding. Monek v. Borough of S. River, 354 N.J. Super. 442, 454 (App. Div. 2002).

The ALJ found that Ambrosio failed to meet any of the elements. PSD at 10-11. I ADOPT this finding for the reasons expressed in the Initial Decision. Further, I note that there were not any Exceptions to the ALJ's analysis or conclusion concerning this issue.

Res Judicata

Res judicata is a broad common-law doctrine encompassing the modern-day theories of claim preclusion and issue preclusion. Villanueva v. Zimmer, 431 N.J. Super. 301, 311 (App. Div. 2013). "In essence, the doctrine of res judicata provides that a cause of action between parties that has been finally determined on the merits by a tribunal having jurisdiction cannot be relitigated by those parties or their privies in a new proceeding." Ibid. Res judicata serves important goals, including "finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness[.] " First Union Nat'l Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 352 (2007). "Adjudicative determinations by administrative tribunals are entitled to preclusive effect if rendered in proceedings meriting that deference." Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 522, (2006) (quoting Zoneraich v. Overlook Hosp., 212 N.J. Super. 83, 93-94, (App. Div. 1986)).

Res judicata, or claim preclusion, applies when a party seeking to apply the doctrine establishes: (1) a valid judgment on the merits was entered on the claim in a prior action; (2) the parties in the later action are identical or in privity with those in the prior action; and (3) the claim in the later actions arose out of the same transaction or occurrence as the claim in the earlier

case. Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 412 (1991). "Claim preclusion applies not only to matters actually determined in an earlier action, but to all relevant matters that could have been so determined." Ibid.

The ALJ found that Ambrosio did not meet the standard of res judicata. PSD at 11-12. I ADOPT this finding for the reasons expressed in the Initial Decision. Further, I note that there were not any Exceptions to the ALJ's analysis or conclusion concerning this issue.

Allegations Against Ambrosio

The OTSC alleges that Ambrosio engaged in unlicensed activity by accepting a residential mortgage application when he was unlicensed to do so. He did not inform the Buyers that he was a principal of Century Investments, who owned the Property. Further, he acted as the seller's representative and MLO, creating a conflict of interest. He also failed to deposit the Buyers' deposit into an escrow account, and failed to return their money upon demand after the deal fell through.

Additional Factual Findings

I ADOPT the ALJ's findings of fact, and MODIFY to add the following facts supported by the record.

In his Answers to Interrogatories, Ambrosio stated that he "helped [the Buyers] with processing their loan[.]" Certification of Chandra M. Arkema in Support of Motion for Summary Decision ("Arkema Cert."), ¶22, Ex. C attached thereto. He further indicated that "[m]y conversation were solely intended to help process their loan." Arkema Cert., ¶ 22, Ex. D attached thereto.

The Direct Endorsement Approval for a HUD/FHA Insured Mortgage, executed by the Buyers on March 2, 2016, specifically states, that the "Mortgagee, its owners, officers, employees

or directors do not have a financial interest in or relationship, by affiliation or ownership, with the builder or seller involved in this transaction." Certification of Troy Dayton in support of Motion for Summary Decision ("Dayton Cert.") Ex. 1, DOBI 0059.

In text messages between MM and Ambrosio, on April 22, 2016, MM asked if she could use the preapproved mortgage on another property and Ambrosio responded that she "would have to go through the approval process again but it would be easier and quicker" because "everything has [b]een processed." Dayton Cert. Ex. 5, DOBI 0102. MM also asked Ambrosio if he could "do another preapproval for a property I just found asking price \$134900[.]" Id. at DOBI 0087. Ambrosio responded that he could not "approve u for that price I'm sorry way to high[.]" Id. at DOBI 0088. He indicated that he could not approve higher than \$125,000. Ibid. On April 25, 2016, MM asked Ambrosio "since we having so many problems would you be able to process another property when I find one[?]" Id. at DOBI 0102. Ambrosio assured her that he would, and would also be able to get her a preapproval letter. Ibid. MM asked him several more times about a preapproval letter on April 27, 2016; April 28, 2016; and April 29, 2016. Id. at DOBI 0088-89.

The ALJ found as a fact that the Buyers asked Ambrosio multiple times about the deposit, and he gave them conflicting and noncommittal responses about when the money would be refunded. PSD at 4, 5, 17, 18. I MODIFY to include more specific findings of fact regarding the Buyers' requests for their deposit and Ambrosio's responses. On April 27, 2016, MM asked Ambrosio if she lost the deposit, or if it was in escrow, or if she could use it towards another property. Dayton Cert. Ex. 5, DOBI 0088. Ambrosio replied that it would be refunded. Ibid. On May 2, 2016, Ambrosio indicated that he requested the refund. Id. at DOBI 0089. On May 7, 2016, MM asked for clarification that the deposit was being returned. Id. at DOBI 0090. On May 10, 2016, MM asked how long it would take for the deposit to be refunded. Id. at DOBI 0091.

She asked again on May 12, 2016, and Ambrosio replied it would be a couple of days. Ibid. On May 16, 2016 MM stated that she had not received the refund, and Ambrosio stated that he would follow up. Ibid. On May 18, 2016 MM asked what date she should expect the refund and Ambrosio replied that she “should have tomorrow[.]” Id. at DOBI 0091-0092. On May 19, 2016, MM asked if Ambrosio heard anything about the refund and he did not respond. Id. at DOBI 0092. She again texted about the refund on May 23, 2016, and Ambrosio replied that he requested it, and it was coming. Ibid. On May 26, MM texted and asked if the refund was mailed yet, and stated that she would “be filing claims” if she did not receive it. Ibid. Ambrosio replied that that “they are sending” the refund and that if she filed a claim, it would only delay the process. Ibid. MM asked Ambrosio for the “investor information” so she could contact “them” herself and “get [Ambrosio] out of the middle...” Ibid. Ambrosio responded that he was on her side, and he would ensure the deposit was returned. Ibid. On May 28, 2016, Ambrosio informed MM via text message that the deposit check had been mailed. Id. at DOBI 0093. On June 4, 2016, Ambrosio told MM that he was “calling them now” and he would pick up the refund for MM. Ibid. When MM followed up on June 6, 2016, Ambrosio told her that he was going to get it that day. Ibid. When MM followed up on June 7, 2016, Ambrosio told her that he “was told” that “they were mailing it...” Ibid. On June 9, 2016, Ambrosio again told MM that the “check was finally mailed to u[.]” Id. at DOBI 0094. On June 13, 2016, MM again asked Ambrosio for “their information” and Ambrosio responded that he would send it to her in thirty minutes, as he was in a closing. Ibid. MM again asked for the “investor contact information.” Ibid. The text messages between MM and Ambrosio in the record end after that exchange.

Count One – Unlicensed Activity

Count One of the OTSC alleges that by directly taking a residential mortgage application, with an expired license, Ambrosio violated N.J.S.A. 17:11C-54(c)(1)(a), N.J.S.A. 17:11C-75(c), and N.J.S.A. 17:11C-75(d). N.J.S.A. 17:11C-75(d) was later withdrawn by the Department.

Under N.J.S.A. 17:11C-54(c)(1)(a), no “individual shall act as a mortgage loan originator without first obtaining a license or transitional license under [RMLA].” Under N.J.S.A. 17:11C-75(c), no “person shall assist, or aid or abet a licensee with respect to any licensed activities regulated by this act, unless properly licensed under [RMLA]...”

As found by the ALJ, an MLO is defined as:

any individual...licensed pursuant to the provisions of this act, and any individual who should be licensed pursuant to the provisions of this act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly takes a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan.
N.J.S.A. 17:11C-53.

The ALJ found that it was undisputed that Ambrosio stood in the shoes of the seller of the Property—Century Investments. PSD at 12. Further, from the time the loan application was submitted, Ambrosio interacted with the Buyers multiple times over the ensuing months regarding the home inspection, the closing date, additional funds needed for the closing, and answered questions about prequalification letters for other properties. Ibid. The ALJ found that when considering the definition of an MLO as it relates to Ambrosio’s actions, it was evident that Ambrosio acted in that capacity and/or assisted, aided or abetted a licensee with respect to the licensed activities as regulated under RMLA. Ibid. Ambrosio’s role in this transaction went well beyond that of a business development manager, his actual role at MLD. Id. at 13. The ALJ found that that Ambrosio violated N.J.S.A. 17:11C-54(c)(1)(a), and N.J.S.A. 17:11C-75(c). Ibid.

I ADOPT the ALJ’s findings and conclusions. Ambrosio was in contact with the Buyers for several months regarding different aspects of purchasing a home and obtaining a mortgage.

The Buyers specifically asked him to prequalify them for mortgage amounts, which he declined to do, not because he was unlicensed, but because the requested amount was too high. Dayton Cert. Ex. 5, DOBI 0087-88, 0102. Further, Ambrosio stated that he “helped [the Buyers] with processing their loan[.]” Arkema Cert., ¶22, Ex. C attached thereto. Helping with the processing of the Buyers’ loan is an activity that Ambrosio would have to be licensed as an MLO to perform, as offering or negotiating the terms of a residential mortgage loan would be the duties of a licensed MLO. N.J.S.A. 17:11C-53. Further, he advised the Buyers regarding whether he could prequalify them for certain loan amounts. Accordingly, I ADOPT the ALJ’s conclusion that Ambrosio violated N.J.S.A. 17:11C-54(c)(1)(a), which prohibits individuals from acting as an MLO without first obtaining a license, and N.J.S.A. 17:11C-75(c), which prohibits individuals from assisting, aiding, or abetting a licensee with respect to any licensed activities, unless that person is licensed.

Count Two – Conflict of Interest

Count Two of the OTSC alleges that by simultaneously acting as an unlicensed MLO, seller’s representative, and the owner of the subject residential property, Ambrosio violated N.J.S.A. 17:11C-75(e).

Under N.J.S.A. 17:11C-75(e), 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...”

The ALJ found that the Buyers were aware that Ambrosio had an interest in the Property, as they gave him a check in the amount of \$3,900 as “deposit monies”, which Ambrosio cashed before the Agreement was signed and the Application filed. PSD at 14. The ALJ found that

Ambrosio's conduct in acting as an MLO without a license while simultaneously acting as the sellers' representative created a direct conflict of interest which was deceptive and misleading to both MLD and the Buyers. Id. at 14-15. The ALJ concluded that Ambrosio violated N.J.S.A. 17:11C-75(e). Id. at 15.

I ADOPT the ALJ's findings and conclusions. Ambrosio was not forthcoming with the Buyers about his dual roles of one of the principals of Century Investments who owned the Property and an MLO.

It was represented to the Buyers on The Direct Endorsement Approval for a HUD/FHA Insured Mortgage, executed by the Buyers on March 2, 2016, that the "Mortgagee, its owners, officers, employees or directors do not have a financial interest in or relationship, by affiliation or ownership, with the builder or seller involved in this transaction." Dayton Cert. Ex. 1, DOBI 0059. Ambrosio was an employee of MLD, the mortgagee, and had a financial interest in the seller, Century Investments. This was unfair to the Buyers, because as a principal of Century Investments, it would be to Ambrosio's advantage if the deal went through, and he had little or no incentive to protect the Buyers' interests.

Further, it appears as though the Buyers were not aware of Ambrosio's role in Century Investments. When the Buyers asked for their deposit back after the deal fell through, Ambrosio gave them noncommittal answers about when their deposit would be returned and was vague about who exactly was responsible for returning the Buyers' deposit, indicating that "they are sending" it, he was "calling them now" and "they were mailing it..." Dayton Cert. Ex. 5, DOBI 0092-93. MM asked Ambrosio for the "investor information" so she could contact them herself and "get [Ambrosio] out of the middle..." Id. at DOBI 0092. It is clear from these exchanges that MM was unaware that Ambrosio was one of the principals of Century Investments and that he had

cashed their deposit check, as she asked for the investor's information so Ambrosio would not have to be involved.

Accordingly, I ADOPT the ALJ's conclusion that Ambrosio violated N.J.S.A. 17:11C-75(e), which prohibits licensees from engaging in unfair or deceptive practices, defrauding or misleading borrowers, lenders, and concealing information related to any transaction. Id. at 15.

Count Three – Failure to Place Funds in Escrow

Count Three of the OTSC alleges that by cashing the consumer's earnest money deposit check, and failing to place said funds in an escrow or trust account immediately upon receipt, Ambrosio violated N.J.S.A. 17:11C-75(n) and N.J.S.A. 17:11C-75(e).

Under N.J.S.A. 17:11C-75(e), 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..."

Under N.J.S.A. 17:11C-75(n), no "residential mortgage lender or residential mortgage broker shall fail to place in escrow, immediately upon receipt, any money, fund, deposit, check, or draft entrusted to the licensee by any person...or to deposit the funds in a trust or escrow account maintained by the licensee with a depository institution, wherein the funds shall be kept until the disbursement thereof is properly authorized."

The ALJ found that one week after filing the Application, the Buyers gave Ambrosio a check in the amount of \$3,900 made out to Century Investments. PSD at 3, 17-18. Ambrosio, as a principal of Century Investments, cashed the check the same day. Id. at 3-4. At no time either upon receipt or after the execution of the Agreement, was the \$3,900 placed in escrow or a trust

account. Id. at 4, 18. The ALJ concluded that Ambrosio violated N.J.S.A. 17:11C-75(n) and N.J.S.A. 17:11C-75(e). Id. at 18.

I ADOPT the ALJ's findings. The evidence supports that Ambrosio took the Buyers' deposit check and instead of placing the funds into escrow as required by N.J.S.A. 17:11C-75(n), he cashed the check. Ambrosio argues that the money was for repairs to the property, as the Buyers were aware that the seller could not afford to repair the property. Certification of Antonio Ambrosio ¶8. However, there is no evidence in the file to corroborate this assertion. Further, this does not relieve Ambrosio of his responsibility to place the funds in a trust or escrow account. Accordingly, I ADOPT the ALJ's conclusion that Ambrosio violated N.J.S.A. 17:11C-75(n), which requires licensees to place money in a trust or escrow account, and N.J.S.A. 17:11C-75(e), which prohibits licensees from engaging in unfair or deceptive practices, defrauding or misleading borrowers, lenders, and concealing information related to any transaction.

Count Four – Failure to Return Deposit

Count Four of the OTSC alleges that by failing to deliver the deposit, upon demand, without good cause, Respondent violated N.J.S.A. 17:11C-75(p) and N.J.S.A. 17:11C-75(e).

The ALJ found that settlement on the Property was scheduled on April 22, 2016. PSD at 5. However, the deal fell through the day prior to the scheduled settlement date. Ibid. The Buyers then sent at least 21 texts to Ambrosio requesting their \$3,900 be returned. PSD at 5, 18. A check dated September 4, 2016, in the amount of \$3,900, was sent to the Buyers on the personal account of Misseri. Id. at 5. The ALJ concluded that Ambrosio violated N.J.S.A. 17:11C-75(e) and N.J.S.A. 17:11C-75(p). Id. at 18.

Under N.J.S.A. 17:11C-75(e), 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...”

Under N.J.S.A. 17:11C-75(p), no “... mortgage loan originator shall fail without good cause to truthfully account or deliver to any person any personal property, money, fund, deposit, check...document or thing of value, which is not the licensee’s property, or which the licensee is not in law or equity entitled to retain under the circumstances...upon demand of the person entitled to the accounting or delivery.”

I ADOPT the ALJ’s findings. The evidence supports that Ambrosio gave the Buyers evasive answers regarding the return of their deposit. Ambrosio continued to string the Buyers along about when they would receive their deposit for five months, until a check dated September 4, 2016, in the amount of \$3,900, was sent to the Buyers on the personal account of Misseri. Id. at 5.

Accordingly, I ADOPT the ALJ’s conclusion that Ambrosio violated N.J.S.A. 17:11C-75(e), which prohibits licensees from engaging in unfair or deceptive practices, defrauding or misleading borrowers, lenders, and concealing information related to any transaction, and N.J.S.A. 17:11C-75(p), which requires licensees to deliver any funds entrusted to them by others promptly and prohibits them from withholding or misappropriating funds. Id. at 18.

PENALTY AGAINST THE RESPONDENT

Bar to being issued an MLO License

Under N.J.S.A. 17:11C-70, the Commissioner may deny, suspend, revoke, refuse to renew, or bar any license issued under the RMLA. The ALJ concluded that that it was appropriate to

permanently bar Ambrosio from obtaining an MLO license, as was requested in the OTSC. Initial Decision at 9.

In its Exceptions, the Department argues that the OTSC should be conformed to the proofs and that Ambrosio should be subject to a broader permanent bar from working in the mortgage industry under N.J.S.A. 17:11C-70(b)(5), a more stringent bar than that the ALJ ordered. Department Exceptions at 2-5. The Department states that conforming the OTSC would be in the interests of efficiency, expediency, would avoid overly-technical pleading requirements, and not prejudice Ambrosio. Id. at 4.

The Department argues that given Ambrosio's pattern of acting as an unlicensed MLO the broader bar preventing him from acting as a residential mortgage lender, residential mortgage broker, or mortgage loan originator, or a stockholder, an officer, director, partner or other owner, or any employee of a licensee is warranted. Ibid. (citing N.J.S.A. 17:11C-70(b)(5)).

N.J.A.C. 1:1-6.2(a) provides that "[u]nless 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." Here, the OTSC gave notice to Ambrosio that individuals who violate RMLA or the regulations promulgated under it, thereby causing financial harm to consumers, could be prohibited from acting as a residential mortgage lender, residential mortgage broker, or mortgage loan originator, or a stockholder, an officer, director, partner or other owner, or any employee of a licensee. OTSC at 4 (citing N.J.S.A. 17:11C-70(b)(5)). Amending the OTSC to state that Ambrosio should appear and show cause why he should not be prohibited from acting as a residential mortgage lender, residential mortgage broker, or mortgage loan originator, or a stockholder, an officer, director, partner or other owner, or an employee of a licensee

would be in the interests of efficacy, expediency, and would avoid overly technical pleading requirements.

Further, amending the OTSC would not prejudice Ambrosio because during the proceedings before the OAL the Department argued that Ambrosio should be precluded from acting as a residential mortgage lender, residential mortgage broker, or mortgage loan originator, or a stockholder, an officer, director, partner or other owner, or any employee of a licensee in its moving papers and at oral argument.¹¹ Department Brief in Support of Motion for Summary Decision at 22-23; Initial Decision at 9. Ambrosio had the opportunity to respond to the Department's arguments regarding barring him from acting as an employee of a licensee in his reply, though he failed to do so. Thus, Ambrosio had notice through the OTSC and during the proceedings before the OAL that the Department was seeking to prohibit him from being employed by a licensee. Accordingly, the OTSC in this matter should be amended.

Pursuant to N.J.S.A. 17:11C-70(b)(5), the Commissioner can bar individuals who knowingly violate RMLA or its related regulations and cause financial harm to consumers from working as residential mortgage lenders, brokers, or loan originators. Pursuant to N.J.S.A. 17:11C-70(b)(5), the Commissioner has the authority to prohibit individuals who knowingly violate RMLA from also acting as a stockholder, officer, director, owner, or an employee of a licensee.

Prohibiting Ambrosio from acting as a residential mortgage lender, residential mortgage broker, or mortgage loan originator, or a stockholder, an officer, director, partner or other owner,

¹¹ The Initial Decision states that the Department sought to permanently bar Ambrosio from holding a license or working as an employee of a licensee in its moving papers and at oral argument. Initial Decision at 9. Oral argument was held on the Department's Motion for Summary Decision on August 23, 2023. Id. at 3. A penalty hearing was held on May 23, 2024. Ibid.

or any employee of a licensee under N.J.S.A. 17:11C-70(b)(5) is appropriate in this matter. Ambrosio held himself out as a licensee to the Buyers, and created a conflict of interest because in addition to acting as an MLO, he had an ownership interest in the Property. He cashed the Buyers' deposit check instead of holding it in escrow, and then gave noncommittal answers about when they would have their deposit returned to them for months. Accordingly, I MODIFY the ALJ's decision and ORDER that Ambrosio be barred from acting as a residential mortgage lender, residential mortgage broker, or mortgage loan originator, or a stockholder, an officer, director, partner or other owner, or any employee of a licensee pursuant to N.J.S.A. 17:11C-70(b)(5).

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 violator. The ALJ found that Ambrosio acted in bad faith. Initial Decision at 5. Ambrosio acted as an MLO knowing he was unlicensed. He had an ownership interest in Century Investments, demonstrated by his signing the Agreement on its behalf, and cashing the Buyers' deposit check which was made out to Century Investments. He then misled the Buyers about when their deposit would be returned for months. I ADOPT the ALJ's finding that Ambrosio acted in bad faith and find that this factor weighs in favor of a higher penalty.

The second Kimmelman factor is the ability of the respondent to pay the penalties imposed. Respondents who claim an inability to pay civil penalties bear the burden of proving their incapacity. Commissioner v. Shah, OAL Dkt. No. BKI 11903-05, Initial Decision (04/15/08), Final Decision and Order (09/02/08). The ALJ found that no proofs were submitted to support or refute Ambrosio's position that he is unable to pay a fine. Initial Decision at 6. I agree and find that this factor is neutral.

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 stated that Ambrosio took the Buyers' check and immediately cashed it before the Application and Agreement were signed. Initial Decision at 6. The funds were eventually repaid by Ambrosio's father-in-law, after the deal fell through and the Buyers demanded the return of the funds. Id. at 7. The ALJ concluded that Ambrosio profited from his conduct and this factor dictated a higher penalty. Ibid. I ADOPT the ALJ's finding and conclude that this factor weighs in favor of a higher penalty.

The fourth Kimmelman factor addresses the injury to the public. The ALJ found that the buyers were injured by the lack of transparency and the delay in having their deposit returned. Ibid. Further, Ambrosio's actions hurt the public as a whole. Ibid. I ADOPT the ALJ's findings. 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). Although Ambrosio was never licensed as an MLO, his actions nevertheless eroded the public's confidence in the banking industry. 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 the violation lasted several months and Ambrosio violated RMLA “from the start.” Initial Decision at 8. I ADOPT the ALJ’s finding and conclude that this factor also weighs in favor of a higher penalty.

The sixth factor contemplated in Kimmelman is the existence of criminal actions and whether a civil penalty may be unduly punitive if other sanctions have been imposed. A large civil penalty may be unduly punitive if other sanctions have been imposed for the same violation Kimmelman, 108 N.J. at 139. The ALJ found that Ambrosio has not faced any criminal or treble-damages actions and concluded that the imposition of a civil penalty would not be unduly punitive. Initial Decision at 8. I ADOPT the ALJ’s finding and conclude that under this factor a larger penalty would not be unduly punitive.

The final factor examined in Kimmelman is previous relevant regulatory and statutory violations of the respondent, and if past penalties have been insufficient to deter future violations. The ALJ found that although Ambrosio had been named in the CO between the Department and MLB as an employee who engaged in unlicensed activity, the ALJ found that he was not individually named as a party, and did not have the benefit of due process. Id. at 9. The ALJ found that Ambrosio did not have any past violations. Ibid. I ADOPT the ALJ’s finding and conclude that this factor weighs in favor of a lower monetary penalty.

After weighing the Kimmelman factors, I ADOPT the ALJ’s recommendation that Ambrosio pay civil monetary penalties in the amount of \$40,000. However, I modify as to how the total is allocated, and allocate the penalties as follows: \$10,000 for engaging in unlicensed

activity in violation of N.J.S.A. 17:11C-54(c)(1)(a) and N.J.S.A. 17:11C-75(c) in Count One; \$10,000 for engaging in unfair or deceptive practices, defrauding or misleading borrowers, lenders, and concealing information related to any transaction in violation of N.J.S.A. 17:11C-75(e) in Counts Two, Three, and Four; \$10,000 for not placing the Buyers' deposit in an escrow account in violation of N.J.S.A. 17:11C-75(n) in Count Three; and \$10,000 for not returning the Buyers' funds on demand when the deal fell through in violation of N.J.S.A. 17:11C-75(p) in Count Four.

These penalties are necessary and appropriate under the above Kimmelman analysis given Ambrosio's conduct. Ambrosio engaged in unlicensed activity and was not forthcoming with the Buyers regarding his role in Century Investments. He then took their deposit and cashed it instead of putting it into an escrow account. When the deal fell through, he gave them evasive answers for months until his father-in-law, Misseri, who was also a principal of Century Investments, returned their deposit with a check drawn from Misseri's account.

CONCLUSION

Having reviewed the Initial Decision, the parties' exceptions, and the entire record herein, I hereby ADOPT the Findings and Conclusions as set forth in the Initial Decision, except as modified herein. Specifically, as to Count One, I ADOPT the ALJ's conclusions and hold that the Department proved that Ambrosio violated N.J.S.A. 17:11C-54(c)(1)(a) and N.J.S.A. 17:11C-75(c). As to Count Two, I ADOPT the ALJ's conclusions and hold that the Department proved that Ambrosio violated N.J.S.A. 17:11C-75(e). As to Count Three, I ADOPT the ALJ's conclusions and hold that the Department proved that Ambrosio violated N.J.S.A. 17:11C-75(e) and N.J.S.A. 17:11C-75(n). As to Count Four, I ADOPT the ALJ's conclusions and hold that the Department proved that Ambrosio violated N.J.S.A. 17:11C-75(e) and N.J.S.A. 17:11C-75(p).

I ADOPT the recommended civil monetary penalty and ORDER that Ambrosio is responsible for an administrative penalty of in the amount of \$40,000. I MODIFY as to the allocation as follows: \$10,000 for engaging in unlicensed activity in violation of N.J.S.A. 17:11C-54(c)(1)(a) and N.J.S.A. 17:11C-75(c) in Count One; \$10,000 for engaging in unfair or deceptive practices, defrauding or misleading borrowers, lenders, and concealing information related to any transaction in violation of N.J.S.A. 17:11C-75(e) in Counts Two, Three, and Four; \$10,000 for not placing the Buyers' deposit in an escrow account in violation of N.J.S.A. 17:11C-75(n) in Count Three; and \$10,000 for not returning the Buyers' funds on demand when the deal fell through in violation of N.J.S.A. 17:11C-75(p) in Count Four.

Lastly, I MODIFY the ALJ's recommendation that Ambrosio be prohibited from obtaining an MLO license and hold that Ambrosio is prohibited from acting as a residential mortgage lender, residential mortgage broker, or mortgage loan originator, or a stockholder, an officer, director, partner or other owner, or any employee of a licensee.

It is so ORDERED on this 15th day of November 2024.

A handwritten signature in black ink that reads "Justin Zimmerman". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Justin Zimmerman
Commissioner

jd Ambrosio FO/Final Orders-Banking