

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DOCKET NO. BKI 04035-22
AGENCY DOCKET NO. OCF22-09¹

JUSTIN ZIMMERMAN,²
COMMISSIONER, NEW JERSEY
DEPARTMENT OF BANKING AND
INSURANCE,

Petitioner,

v.

FRANCISCO J. MARTINS,

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 August 1, 2024 Amended³ Initial Decision (“Initial Decision”) of Administrative Law Judge Hon. Jacob S. Gertsman (“ALJ”), wherein the ALJ granted the Department of Banking and Insurance’s (“Department”) motion for summary decision and

¹ The Initial Decision contained a typographical error in the docket number, which has been corrected in this Order.

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

³ The matter was first decided on July 29, 2024, however the initial decision contained a typographical error. The Office of Administrative Law (“OAL”) subsequently issued an Amended Initial Decision, dated August 1, 2024.

recommended the revocation of Francisco J. Martin's ("Respondent") mortgage loan originator ("MLO") license for the violations of RMLA alleged in Order to Show Cause No. OCF22-09 ("OTSC").

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On March 11, 2022, the Department issued the OTSC against the Respondent which sought to revoke the Respondent's MLO license and impose civil monetary penalties,⁴ for violations of the RMLA. The OTSC contains one count and alleges that on March 29, 2019, the Superior Court of New Jersey entered a default judgment against the Respondent for one violation of the New Jersey Insurance Fraud Prevention Act ("Fraud Act"), N.J.S.A. 17:33A-1 to -30 ("Default Judgment"); and that by having a final judgment entered against him in a civil action upon grounds of fraud, the Respondent violated N.J.S.A. 17:11C-70(a)(3)(c) and (g).

On April 26, 2022, the Respondent filed an Answer to the OTSC and requested a hearing. The matter was transferred to the Office of Administrative Law ("OAL") on May 18, 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. Following multiple telephone conferences, the parties agreed during the May 10, 2023, telephone conference that they would be filing cross-motions for summary decision. Ibid.

The parties filed cross-motions for summary decision and joint stipulations of fact on July 19, 2023. Ibid. Opposition briefs were filed by the parties on August 16, 2023. Ibid. The Respondent filed a supplemental brief on August 31, 2023, and the Department filed a response on September 19, 2023. Ibid. Oral argument was held on February 1, 2024, during which, the ALJ directed the parties to file supplemental briefs on whether doctrines of issue preclusion,

⁴ The Department confirmed during oral argument that it is not seeking to impose a monetary penalty for the Respondent's violation of the RMLA. Id. at 7.

including res judicata, collateral estoppel, and entire controversy, apply to default judgments. Ibid. Supplemental briefs were filed by the parties on May 29, 2024. Ibid. The parties submitted a revised joint stipulation of facts on June 5, 2024, and the record on the cross-motions was closed. Ibid.

The ALJ issued the Initial Decision on August 1, 2024, granting summary decision for the Department and denying the Respondent's cross-motion. In the Initial Decision, the ALJ recommended the revocation of the Respondent's MLO license. Id. at 15. The Department did not file exceptions to the Initial Decision. The Respondent filed exceptions on August 13, 2024. The Department filed a reply to the Respondent's exceptions on September 5, 2024.

THE ALJ'S FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

The ALJ stated that summary decision may be granted "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." Id. at 7 (quoting N.J.A.C. 1:1-12.5(b)). The standard for granting summary judgment (decision) is found in Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995):

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 presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial."

[Id. at 7-8 (citing Brill, 142 N.J. at 540 (quoting Anderson v. Liberty Lobby, 477 U.S. 242 (1986)).]

"An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring

the non-moving party, would require submission of the issue to the trier of fact.” Id. at 8 (quoting R. 4:46-2(c)).

The ALJ concluded that there were no material facts in dispute, granted the Department’s motion for summary decision and denied the Respondent’s motion for summary decision. Id. at 10 and 14. In granting the Department’s motion, the ALJ found the following relevant facts.

The ALJ’s Factual Findings

The parties submitted a joint stipulation of facts that was accepted by the ALJ, who accordingly made the following findings of fact.

The Respondent had been licensed with the Department as an MLO, pursuant to N.J.S.A. 17:11C-54(c)(1)(a), until his license expired effective January 1, 2023. Id. at 3. On December 12, 2018, the Department filed a complaint against the Respondent in the Superior Court of New Jersey, Monmouth County, Special Civil Part (“Court”), for one violation of the Fraud Act. Ibid. On March 7, 2019, the Department filed a motion for final judgment by default against the Respondent. Ibid. On March 29, 2019, the Court entered an Order for Final Judgment by Default against the Respondent for \$8,500 for one violation of the Fraud Act. Ibid.

The Department sent the Respondent a proposed letter agreement, dated May 1, 2019, which stated that the Department approved the Respondent’s request to pay off the \$8,500 judgment in twelve installments, and also stated that upon the full satisfaction of such payment obligations the Department would file a “Warrant of Satisfaction with the Superior Court of New Jersey to have the judgment expunged.” Ibid. The May 1, 2019, proposed letter agreement was signed by Department Investigator Robert Zupko. Ibid. On May 10, 2019, the Respondent signed and returned the May 1, 2019, letter agreement to the Department. Ibid. The Respondent subsequently paid off the judgment in full and on January 12, 2021, the Department filed a warrant

to satisfy the judgment in the Superior Court of New Jersey. Id. at 3-4. The Department never expunged the judgment. Id. at 4.

In 2019, 2020, 2021, and 2022, the Department renewed the Respondent's MLO license. Ibid.

The ALJ's Findings Related to the Applicability of Claim and Issue Preclusion Doctrines

The ALJ first addressed the applicability of claim preclusion (res judicata and the entire controversy doctrine) and issue preclusion (collateral estoppel) doctrines to default judgments to determine whether the re-litigation of the default judgment entered against the Respondent for one violation of the Fraud Act is permissible. Id. at 8. The ALJ stated that the parties agree that collateral estoppel does not apply to this matter⁵, therefore only the applicability of res judicata and the entire controversy doctrine are at issue. Ibid.

The ALJ stated that the Department argued that res judicata and the entire controversy doctrines apply to default judgments, and bar the Respondent from re-litigating the Court's finding that he committed insurance fraud. Id. at 6. Further, the Department's request to revoke the Respondent's MLO license is based on two independent grounds: (1) the 'catch all' violation of 'engaging in any other conduct which would be deemed by the Commissioner to be the cause for revocation' under N.J.S.A. 17:11C-70(a)(3)(g); and (2) the judgment entered against the Respondent on the grounds of fraud, in violation of N.J.S.A. 17:11C-70(a)(3)(c). Id. at 7. The Department noted that the issue of whether or not the Respondent is precluded from re-litigating the findings in the default judgment are only relevant to the first ground, and irrelevant for the second. Ibid.

⁵ The Department conceded that collateral estoppel does not apply because these judgments are not "actually litigated." (Department Supplemental Brief at 4).

The ALJ stated that the Respondent argued that the “Appellate Division has repeatedly held that a judgment entered upon default is, for purposes of collateral estoppel or claim preclusion, without a determination of the underlying merits.” Ibid. The Respondent asserted that the Default Judgment did not involve a determination on the merits, and that the claims in the respective proceedings were not identical, therefore claim and issue preclusion doctrines should not apply. Ibid.

The ALJ’s Findings Related to Res Judicata

The ALJ stated that res judicata requires: (1) that a judgment in a prior action must be valid, final and on the merits; (2) the parties in the later action must be identical or in privity with those in the prior action; and (3) the claim in the prior action must grow out of the same transaction or occurrence as the claim in the earlier one. Ibid. (quoting Watkins v. Resorts. Int’l Hotel & Casino, Inc., 124 N.J. 398, 412 (1991).

Regarding the first element, the ALJ stated that the Department persuasively argued that:

It has been consistently held that default judgments are valid and final judgments for res judicata purposes. Evangel Baptist Church v. Chambers, 96 N.J. Super. 367, 370–71 (Ch. Div. 1967) (“It is quite true that a judgment by default is just as conclusive an adjudication between parties of whatever is essential to support the judgment as one rendered after answer and contest”); In re Hawkins, 231 B.R. 222, 229 (D.N.J. 1999) (“It is black letter law in this State that a default judgment is a final judgment which bars all further litigation”); In re Crispino, 160 B.R. 749, 755 (D.N.J. 1993) (“Whereas res judicata does apply to default judgments, collateral estoppel will not”); Sai Ram Imports Inc. v. Meenakshi Overseas LLC, 2018 WL 2045996, at *3 (D.N.J. May 1, 2018) (“a default judgment qualifies as a final judgment for res judicata purposes”); Tagayun v. Citibank, N.A., 2006 WL 5100512, at *4 (D.N.J. June 9, 2006) (“The rule in New Jersey is that a default judgment is a valid and final adjudication on the merits and therefore has res judicata effect barring future litigation”).

[Id. at 8-9 (citing Department supplemental brief at 5).]⁶

⁶ The ALJ noted that while Sai Ram Imports and Tagayun are unpublished decisions and thus do not constitute binding precedent, under R. 1:36-3, the ALJ found the cited language persuasive. Ibid.

The ALJ found that all elements had been met. Id. at 9. First, the ALJ concluded that the Default Judgment entered against the Respondent is a final judgment of a court of competent jurisdiction and valid for res judicata purposes and therefore found that the first element had been met. Ibid. The ALJ found that the second element was satisfied as it was not disputed that the actions involve identical parties, the Department and the Respondent. Ibid. Regarding the third element, the ALJ rejected the Respondent's argument that the claims are not identical, noting that both matters involve the same violation of the Fraud Act by the Respondent. Ibid. The ALJ therefore concluded that the third element had been met and found that the doctrine of res judicata barred the re-litigation of the judgment entered against the Respondent. Id. at 9-10.

The ALJ's Findings Related to the Entire Controversy Doctrine

The ALJ stated that the entire controversy doctrine provides that non-joinder of claims or parties required to be joined shall result in the preclusion of the omitted claims. Id. at 9 (quoting DiTrollo v. Antiles, 142 N.J. 253, 266 (1995) (citing R. 4:30A, which codifies the entire controversy doctrine)). The fundamental principle behind the inclusion policy of the entire controversy doctrine is that the adjudication of a legal controversy should occur in one litigation in only one court. Id. at 10 (quoting DiTrollo at 267). The central consideration is whether the claims against the different parties arise from related facts of the same transaction or a series of transactions. Ibid.

The ALJ found that the entire controversy doctrine applies to this matter. Ibid. The ALJ stated that the Department argued that "New Jersey courts have held that the entire controversy doctrine, like res judicata, is fully applicable to default judgments." In re Hawkins, 231 B.R. 222, 232 (D.N.J. 1999) (citing Mori v. Hartz Mountain Dev. Corp., 193 N.J. Super. 47, 55 (App. Div. 1983)). Id. at 10 (citing Department supplemental brief at 6). The ALJ stated that the Respondent

was properly served in the Superior Court action. Ibid. (citing Joint Stipulation of Facts ¶4, Exhibit C at 1). Further, the Respondent failed to raise any defenses or even to respond to the Department's claim that he violated the Fraud Act. Ibid. The ALJ therefore found that the entire controversy applies to the present matter and barred the re-litigation of the judgment entered against the Respondent. Ibid.

The ALJ's Findings Related to the Allegations in the OTSC

The ALJ stated that licensure and regulation of Mortgage Loan Originators in New Jersey are governed by the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act"), 12 U.S.C. 5101 et seq., and its New Jersey equivalent, RMLA. The SAFE Act mandates that any applicant for a mortgage loan originator license must meet minimum standards including "financial responsibility, character, and general fitness." Ibid. (citing 12 U.S.C. 5104(b)(3)).

The ALJ stated that the Department sought revocation of the Respondent's MLO license pursuant to N.J.S.A. 17:11C-70(a)(3)(c) and (g), as set forth in the OTSC. Ibid. N.J.S.A. 17:11C-70(a)(3) provides that:

[t]he commissioner may revoke, suspend, or refuse to renew, a residential mortgage lender or residential mortgage broker license, including the license of a qualified individual licensee or a branch office license, or a mortgage loan originator license, or transitional mortgage loan originator license, or impose a penalty pursuant to this act, if the commissioner finds, after notice and an opportunity for a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and any rules adopted thereunder, that any person or holder of the license has

....

(c) Been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, including but not limited to the disqualifying criminal activities stated in paragraph (2) of subsection a. of section 7 [C.17:11C-57] of this act, if applicable, or had a final judgment entered against the person in a civil or administrative action upon grounds of fraud, misrepresentation, deceit, or failure to maintain books, accounts,

records and other documents as required by section 21 [C.17:11C-71] of this act;

....

(g) Engaged in any other conduct which would be deemed by the commissioner to be the cause for denial, revocation, suspension, or refusal of the license or license renewal.

[Id. at 11]

The ALJ stated that the Respondent argued that since there was no meritorious determination in the proceedings underlying the Default Judgment, the issue of whether the Respondent's conduct supports the revocation of his MLO license necessarily involves factual issues that have never been determined. Id. at 7. At a minimum, the Respondent argued, he has raised a question of fact, requiring a determination of the Department's claims at a hearing on the merits. Ibid. The ALJ stated that res judicata and the entire controversy doctrine bar the re-litigation of the Default Judgment against the Respondent for one violation of the Fraud Act and thus rejected the Respondent's argument that he has raised a question of fact. Id. at 10. Accordingly, the ALJ found that there were no material facts in dispute and assessed the claims of the parties based on the undisputed facts. Ibid.

The ALJ stated that on March 29, 2019, the Court entered an Order for Final Judgment by Default against the Respondent for \$8,500 for one violation of the Fraud Act. Ibid. The ALJ further stated that in that order, the Court provided that:

Defendant, Francisco J. Martins ("Defendant"), having been duly served with a copy of the Summons and Complaint in the above-entitled action and having been defaulted for failure to appear, answer, or otherwise defend;

This Court now finds that Defendant violated the New Jersey Insurance Fraud Prevention Act, specifically N.J.S.A. 17:33A-4(a)(1), by knowingly providing false or misleading information in support of a 2013 insurance claim to ACE Recreational Marine Insurance;

[Id. at 11-12]

The ALJ found that the Respondent was in violation of N.J.S.A. 17:11C-70(a)(3)(c) by having a final judgment entered against him finding that he violated the Fraud Act, by knowingly providing false or misleading information in support of a 2013 insurance claim to ACE Recreational Marine Insurance. Id. at 14. The ALJ further found that the Respondent's conduct, as described above, constitutes conduct which would be deemed by the Commissioner to be the cause for denial, revocation, suspension, or refusal of the license or license renewal in violation of N.J.S.A. 17:11C-70(a)(3)(g). Ibid. The ALJ concluded that the Department proved both alleged statutory violations. Ibid.

The ALJ's Findings Related to Breach of Contract

The ALJ rejected the Respondent's argument that the repayment agreement constituted a contract for the expungement of the judgment against him and therefore concluded that the Department is not in breach of contract with the Respondent. Id. at 12. The ALJ stated that the Department correctly argued that the Respondent could not reasonably have believed that the letter was a contract as it was a payment plan, that it is legally impermissible to have a contract to expunge a judgment, and that there was no consideration. Ibid. The ALJ further noted that the Department did in fact file the Warrant of Satisfaction with the Court in accordance with the repayment agreement. Ibid.

The ALJ Findings Related to the Doctrine of Equitable Estoppel

The ALJ rejected the Respondent's argument that the Department is equitably estopped from revoking the Respondent's MLO license because it renewed the license following entry of the Default Judgment. Id. at 14.

The ALJ stated that the doctrine of equitable estoppel is "designed to prevent injustice by not permitting a party to repudiate a course of action on which another party has relied to his

detriment.” Id. At 12 (quoting Knorr v. Smeal, 178 N.J. 169, 178 (2003)). “Equitable estoppel is rarely invoked against a governmental entity, . . . particularly when estoppel would ‘interfere with essential governmental functions.’” Id. at 13 (quoting In re Johnson, 215 N.J. 366, 378 (2013)). “Nonetheless, equitable considerations are relevant to assessing governmental conduct, . . . and may be invoked to prevent manifest injustice[.]” Ibid. (quoting In re Johnson at 379).

The ALJ stated “[t]he essential elements of equitable estoppel are a knowing and intentional misrepresentation by the party sought to be estopped under circumstances in which the misrepresentation would probably induce reliance, and reliance by the party seeking estoppel to his or her detriment.” Ibid. (quoting In re Johnson at 379). The party asserting the estoppel bears the burden of proof, and his or her reliance must be “reasonable and justifiable.” Ibid. (quoting Foley Mach. Co. v. Amland Contractors, 209 N.J. Super. 70, 75 (App.Div. 1986)). Generally, the doctrine requires that the party estopped engage in:

[A] misrepresentation or concealment of material facts, known to the party allegedly estopped and unknown to the party claiming estoppel, done with the intention or expectation that it will be acted upon by the other party and on which the other party does in fact rely in such a manner as to change his position for the worse.

[Ibid. (quoting Carlsen v. Masters, Mates & Pilots Pension Plan Trust, 80 N.J. 334, 339 (1979)).]

The misrepresentation or concealment need not be fraudulent or intentionally misleading. Ibid. (quoting Miller v. Bd. of Trs., Techer’s Pension and Annuity Fund, 179 N.J. Super. 473, 477 (App. Div. 1981)).

The ALJ stated that the record lacks any evidence of a “knowing and intentional misrepresentation” by the Department. Id. at 13. The ALJ further stated that N.J.S.A. 17:11C-70 requires that the Department renew the license until the Respondent has a hearing and a final decision by the Commissioner. Ibid. Therefore, the processing of annual license renewals did not

constitute an endorsement of the Respondent's conduct or a waiver of the Department's right to initiate an enforcement action. Id. at 14. Further, the ALJ concluded that the Respondent's reliance on the Department's continued license renewal as demonstrating that the "matters alleged in the 2018 Complaint and upon which the Order of Default Judgement is Based, [*sic*] were conclusively resolved" (Ibid. (quoting Respondent cross-motion at 4)) was not reasonable. Therefore, the ALJ found that equitable estoppel cannot be imposed upon the Department. Ibid.

Penalties Recommended by the ALJ

The ALJ found that the Department proved the violations of RMLA alleged in the OTSC and that therefore the revocation of the Respondent's MLO license is warranted. Ibid.

EXCEPTIONS

Pursuant to N.J.A.C. 1:1-18.4(a), Exceptions were due on August 13, 2024. The Department filed a letter on August 9, 2024, indicating it was not filing any exceptions to the Initial Decision. The Respondent filed exceptions to the Initial Decision dated August 13, 2024. The Department filed a reply on September 5, 2024.⁷

Respondent's Exceptions and the Department's Reply

In his exceptions, the Respondent states that the sole basis for the revocation of the Respondent's license was the Default Judgment entered against the Respondent in 2019. Respondent Exceptions at 1. The Respondent emphasizes that there was no finding of any violation related to the Respondent's performance as an MLO, and no record of any consumer complaint or other regulatory issue with the Department since entry of the Default Judgment. Ibid.

⁷ The Respondent submitted email correspondence in response to the Department's Reply on September 5, 2024. Since applicable administrative rules do not permit a sur-reply, the Respondent's correspondence was not considered.

The Respondent further takes issue with the Department's renewal of his license in 2020, 2021 and 2022. Ibid.

The Respondent posits that the reason for the Department's authority to revoke a license for a violation of the Fraud Act relates to the character and fitness of the MLO. Ibid. He further argues that the Department's renewal of the license, and the agreement regarding payment of the \$8,500 penalty implied a tacit determination that he possessed the requisite character and fitness for licensure. Id. at 2. Moreover, the Respondent asserts that if this was not the case, the Department would have "provided for a hearing back in 2019". Ibid.

Next, the Respondent argues that the ALJ should have resolved "inconsistencies in the manner in which [the Respondent] was treated". Ibid. The Respondent further contends that the ALJ should have considered whether the Department's decision to "suddenly" pursue the revocation of his MLO license, in the context of the aforementioned circumstance, could be considered an abuse of discretion. Ibid. The Respondent concludes that the Initial Decision should be rejected for these reasons. Ibid.

In its Reply, the Department argues that the Respondent is wrong to interpret the Department's renewal of his license as a determination by the Department that the Respondent had the requisite character and fitness. Department Reply at 2. The Department states that every licensee has a property right in a license, and agencies cannot refuse to renew a license without first providing an opportunity for a hearing. Ibid. (citing Graham v. N.J. Real Estate Comm., 217 N.J. Super. 130, 135 (1987)). The Department notes that this is also required under RMLA, specifically N.J.S.A. 17:11C-70(a)(3). Ibid.

The Department contends that facts regarding the Respondent's performance as an MLO are irrelevant, given the finding of insurance fraud against him. Ibid. The Department further

asserts that any delay in the filing of the OTSC is also irrelevant, as long as it was brought within the ten-year statute of limitations under N.J.S.A. 2A:14-1.2. Ibid. The Department states that the Respondent's fraudulent insurance claim was made in 2013 and the court found he committed insurance fraud in 2019, therefore the OTSC, which was filed in 2022, was filed within the statute of limitations, rendering any delay irrelevant. Ibid.

LEGAL DISCUSSION

N.J.A.C. 1:1-12.5(b) provides 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." To determine whether a genuine issue of material fact exists, the motion judge must consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995).

In support of their cross-motions for summary decision, the parties submitted a joint stipulation of facts, and each argued entitlement to prevail as a matter of law. The Department argued that the "judgment of insurance fraud entered against Martins in 2019 gives grounds to revoke his MLO license." Department cross-motion at 7. The Department further argued that res judicata and the entire controversy doctrine apply to default judgments and preclude the Respondent from re-litigating the court's findings underlying the Default Judgment. Department supplemental brief at 2.

The Respondent argued that the Department's reliance on the Default Judgment as the sole basis for seeking the revocation of the Respondent's MLO license is insufficient to maintain its

action against the Respondent. Respondent cross-motion at 2. The Respondent opposed the application of res judicata and the entire controversy doctrine by asserting that a judgment entered upon default is, for purposes of collateral estoppel or claim preclusion, without a determination of the underlying merits; and that claims in this proceeding are not identical to those asserted in 2018, which underlie the Default Judgment. Respondent supplemental brief at 2-3. The Respondent contended that the Department's claims involve questions of fact regarding the Respondent's conduct that have never been determined. Id at 3. Therefore, the Respondent argued that he has raised a question of fact, requiring a determination of the Department's claims at a hearing on the merits. Id at 4.

The ALJ found that there are no material facts in dispute and that the Department is entitled to summary decision as to the allegations in the OTSC. For the reasons set forth in the Initial Decision and discussed herein, I ADOPT this finding.

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).

As noted by the ALJ, 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). The ALJ found that all of the elements of res judicata were met. Initial Decision at 9. For the reasons stated in the Initial Decision and for the reasons set forth below, I ADOPT this finding.

First, the ALJ found that the Default Judgment entered against the Respondent for one violation of the Fraud Act is a final judgment of competent jurisdiction and valid for res judicata purposes. Ibid. Next, the ALJ found that the actions involved identical parties, the Department and the Respondent. Ibid. Finally, the ALJ rejected the Respondents' argument that the claims were not identical because both matters involved the same violation of the Fraud Act by the Respondent. Ibid.

To determine whether identity of claims exists for res judicata purposes, courts must consider the following factors:

(1) whether the acts complained of and the demand for relief are the same (that is, whether the wrong for which redress is sought is the same in both actions); (2) whether the theory of recovery is the same; (3) whether the witnesses and documents necessary at trial are the same (that is, whether the same evidence necessary to maintain the second action would have been sufficient to support the first); and (4) whether the material facts alleged are the same.

[Wadeer v. N.J. Mfrs. Ins. Co., 220 N.J. 591, 595 (2015) (quoting Culver v. Ins. Co. of North America, 115 N.J. 451, 463 (1989)).]

Here, the wrong for which redress is sought is the same in the present case and the prior matter, which resulted in the Default Judgment. As stated by the ALJ, both matters involved the

same violation of the Fraud Act. Initial Decision at 9. Further, although the statutory basis of the two matters is not identical (RMLA in the present case and the Fraud Act in the prior matter), the witnesses and documents that would be necessary at trial would be the same. That is, the same evidence necessary to support the Department's claim that the Respondent violated the Fraud Act in the present case would be sufficient to support the prior case. Moreover, the material facts alleged in both matters are virtually identical. Specifically, that the Respondent knowingly provided false or misleading information in support of a 2013 insurance claim to ACE Recreational Marine Insurance. See, OTSC at 2; and Joint Stipulation of Facts ¶2, Exhibit A at 4.

Based on the foregoing, I ADOPT the ALJ's finding that res judicata applies to this matter and bars the re-litigation of the Default Judgment.

Entire Controversy Doctrine

As stated by the ALJ, the entire controversy doctrine provides that non-joinder of claims or parties required to be joined shall result in the preclusion of the omitted claims. DiTrollo v. Antiles, 142 N.J. 253, 266 (1995) (citing R. 4:30A, which codifies the entire controversy doctrine). The fundamental principle behind the inclusion policy of the entire controversy doctrine is that the adjudication of a legal controversy should occur in one litigation in only one court. *Id.* at 267 (citing Cogdell v. Hospital Ctr., 116 N.J. 7, 15 (1989)). In determining whether successive claims constitute one controversy for purposes of the doctrine, the central consideration is whether the claims against the different parties arise from related facts of the same transaction or a series of transactions. *Id.* at 267.

The entire controversy doctrine requires joinder in one action of all legal and equitable claims related to a single underlying transaction. R. 4:30A; Oliver v. Ambrose, 152 N.J. 383, 392 (1998). This tenet "encompasses 'virtually all causes, claims, and defenses relating to a

controversy," including counterclaims and cross-claims. Id. at 394 (quoting Cogdell v. Hospital Ctr. at Orange, 116 N.J. 7, 16 (1989)). "At a minimum, all parties to a suit should assert all affirmative claims and defenses arising out of the underlying controversy." Ibid. It is not necessary that the claims share any "commonality of legal issues," as long as the "distinct claims are aspects of a single larger controversy because they arise from interrelated facts." DiTrolino, supra, 142 N.J. at 271. Furthermore, as noted by the ALJ, the New Jersey Supreme Court has applied the entire controversy doctrine where the prior case was resolved in part by default judgment (see, Mortgagelinq Corp. v. Commonwealth Land Title Ins. Co., 142 N.J. 336, 342 (1995)).

The ALJ found that the entire controversy doctrine applies to this matter and bars re-litigation of the Default Judgment in this case. Initial Decision at 10. I agree. Both the instant case and the previous Superior Court litigation underlying the Default Judgment stem from the same factual basis (*i.e.* the Respondent's violation of the Fraud Act), therefore, the entire controversy doctrine required the Respondent to assert all defenses to the Department's claim of insurance fraud in the prior litigation. As noted by the ALJ, the Respondent was properly served in the prior action (Ibid. citing Joint Stipulation of Facts ¶4, Exhibit C at 1), and failed to raise any defenses or even to respond to the Department's claim that he violated the Fraud Act. Ibid. Accordingly, the doctrine of entire controversy precludes the Respondent from now disputing his violation of the Fraud Act by raising a defense that would have been germane to the prior lawsuit but was nonetheless omitted.

For the foregoing reasons, and the reasons stated in the Initial Decision, I ADOPT the ALJ's finding that the entire controversy doctrine bars re-litigation of the Default Judgment in this case.

Factual Findings

The ALJ accepted the joint stipulation of facts submitted by the parties and made factual findings reflecting the stipulation. I ADOPT the ALJ's findings of fact as set out in the Initial Decision.

Allegations in the OTSC

The OTSC alleges that the Respondent violated N.J.S.A. 17:11C-70(a)(3)(c) and (a)(3)(g) as a result of the Default Judgment entered against the Respondent by the Superior Court of New Jersey, Monmouth County, Special Civil Part ("Court") for knowingly providing false or misleading information in support of an insurance claim in violation of N.J.S.A. 17:33A-4(a)(1) of the Fraud Act. OTSC at 2. N.J.S.A. 17:11C-70(a)(3) provides that:

[t]he commissioner may revoke, suspend, or refuse to renew, a residential mortgage lender or residential mortgage broker license, including the license of a qualified individual licensee or a branch office license, or a mortgage loan originator license, or transitional mortgage loan originator license, or impose a penalty pursuant to this act, if the commissioner finds, after notice and an opportunity for a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and any rules adopted thereunder, that any person or holder of the license has

....

(c) Been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, including but not limited to the disqualifying criminal activities stated in paragraph (2) of subsection a. of section 7 [C.17:11C-57] of this act, if applicable, or had a final judgment entered against the person in a civil or administrative action upon grounds of fraud, misrepresentation, deceit, or failure to maintain books, accounts, records and other documents as required by section 21 [C.17:11C-71] of this act;

....

(g) Engaged in any other conduct which would be deemed by the commissioner to be the cause for denial, revocation, suspension, or refusal of the license or license renewal.

The ALJ found that there are no material facts in dispute and that the Department is entitled to summary decision as to the allegations in the OTSC. For the reasons set forth in the Initial Decision, I ADOPT this finding.

N.J.S.A. 17:11C-70(a)(3)(c) provides that the commissioner may revoke the MLO license of any licensee, if the commissioner finds, after notice and an opportunity for a hearing, that the licensee has “had a final judgment entered against the person in a civil or administrative action upon grounds of fraud, misrepresentation ...[or] deceit...”.

As stated by the ALJ, the record demonstrates that the Respondent had a final judgment entered against him in the Superior Court of New Jersey finding that he violated the Fraud Act. Joint Stipulations of Fact ¶ 4, Id. at 14. More specifically, On March 29, 2019, the Court entered an Order for Final Judgment by Default against the Respondent for \$8,500 for one violation of N.J.S.A. 17:33A-4(a)(1). Ibid. Neither the validity nor finality of the Default Judgment is disputed by the parties. Moreover, as correctly noted by the ALJ, the Court found that the Respondent was properly served. Ibid. Despite the Respondent’s claim that he had “not learned of the Order for Default Judgment until after it was entered, [thus] was unable to fairly meet the uncontested allegations of the Department” (Respondent Cross-Motion at 2), the record demonstrates that the Respondent never took any steps to appeal, set aside or overturn the Default Judgment. Instead, the Respondent voluntarily entered into a payment plan with the Department and complied with the civil penalty imposed by the Default Judgment. Id. at ¶5-7. Therefore, the record demonstrates that the Default Judgment was a valid and final judgment entered against the Respondent on the grounds of fraud.

For the foregoing reasons I ADOPT the ALJ’s finding in the Initial Decision and find that the undisputed facts demonstrate that the Respondent has violated N.J.S.A. 17:11C-70(a)(3)(c).

N.J.S.A. 17:11C-70(a)(3)(g) provides that the commissioner may revoke the MLO license of any licensee, if the commissioner finds, after notice and an opportunity for a hearing, that the licensee has “[e]ngaged in any other conduct which would be deemed by the commissioner to be

the cause for denial, revocation, suspension, or refusal of the license or license renewal.” The record supports the ALJ’s conclusion that the Department has proved a violation of this provision.

As noted by the Department, this can be considered as the “catch all” violation under RMLA. See, Department Supplemental Brief at 7. Accordingly, this provision provides the Commissioner with broad authority to examine the conduct of an MLO licensee and take appropriate action. As noted by the Respondent (See, Respondent Summary Decision Brief at 4), MLO license requirements under state law were enacted as a result of the federal SAFE Act, which governs the conduct of MLOs alongside RMLA and requires that MLO licensees possess “financial responsibility, character, and general fitness.” 12 U.S.C. 5104(b)(3).

In connection with the issuance of the Default Order, the Court specifically made the finding that the Respondent “knowingly provid[ed] false or misleading information in support of a 2013 insurance claim to ACE Recreational Marine Insurance”. Joint Stipulations of Fact ¶ 4, Exhibit C. As stated above, res judicata and the entire controversy doctrine bar re-litigation of the Default Judgment. The ALJ thus correctly rejected the Respondent’s attempt to disturb the Court’s finding by arguing the existence of factual questions that have not been litigated by the Respondent. Initial Decision at 10.

For the forgoing reasons, I ADOPT the ALJ’s finding that the Department has proved that the Respondent violated N.J.S.A. 17:11C-70(a)(3)(c) and (g).

Respondent’s Breach of Contract and Equitable Estoppel Defenses

The ALJ rejected the Respondent’s breach of contract and equitable estoppel arguments. I ADOPT the ALJ’s findings for the reasons set forth in the Initial Decision.

Exceptions

As noted by the Department in its Reply, the Respondent did not raise any new arguments in its Exceptions. Department Reply at 1-2. The Respondent's argument that there has been no finding that his "performance as a licensed MLO" was considered by the ALJ in the Initial Decision. See, Initial Decision at 7. As was the Respondent's erroneous equivocation of the Department's renewal of his MLO license to a determination regarding his character and fitness for licensure or a waiver of the Department's right to initiate an enforcement action. Id. at 7 and 13-14. The Department correctly notes that licensees "[have] a property right in a license, and agencies cannot refuse to renew a license without first providing an opportunity for a hearing. Reply at 2 (citing Graham v. N.J. Real Estate Comm., 217 N.J. Super. 130, 135 (1987)). Moreover, as noted by the ALJ, the Department was required to renew the Respondent's MLO license under RMLA, until a final decision has been reached by the Commissioner to revoke his license. See, Initial Decision at 13-14.

Finally, I reject the Respondent's claim that the ALJ erred by failing to "consider whether this scenario required him to consider whether there was something that suddenly triggered the use of a 5 year old Default Judgment" or "could be considered an abuse of discretion." Respondent Exceptions at 2. The Respondent does not raise any specific act or other detail in support of this hypothetical abuse of discretion, nor does the record include any basis for this proposition. Moreover, as noted by the Department, this matter was initiated within the applicable statute of limitations under N.J.S.A. 2A:14-1.2. See, Department Reply at 2.

For the foregoing reasons, I reject the Respondent's request to reject the Initial Decision.

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 and FIND that

there are no genuine material facts in dispute and that the Department is entitled to judgment as a matter of law.

Finally, I ADOPT the ALJ's recommendation and revoke the Respondent's MLO license.

It is so ORDERED on this 12th day of December 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

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