

JUSTIN ZIMMERMAN,²
COMMISSIONER,
Petitioner,

FINAL DECISION AND ORDER

Respondent.

In the Initial Decision, the ALJ found that Respondent GEM Auto Sales, LLC (“GEM”) financed 394 automobile sales without being licensed as a motor vehicle installment seller (“MVIS”) as alleged in Count One of Order to Show Cause E19-019898 (“OTSC”), and recommended that GEM be fined \$80,000.

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On November 25, 2019³ the Department of Banking and Insurance (“Department”) issued the OTSC against GEM, which sought to revoke GEM’s MVIS license and impose civil monetary penalties for violations of RISA. In the OTSC, the Department alleges that GEM engaged in the following activities in violation of the laws of this State:

Count One: By selling at least three hundred ninety-nine (399) automobiles without accompanying sales contracts in New Jersey without being licensed to do so, GEM violated N.J.S.A. 17:16C-2, N.J.S.A. 17:16C-10(a)(1), (5), (6), and N.J.S.A. 17:16C-55.

On January 15, 2020, GEM filed an Answer and requested a hearing. Initial Decision at 2. The matter was transferred to the Office of Administrative Law (“OAL”) on January 22, 2020 pursuant to N.J.S.A. 52:14B-1 to -31 and N.J.S.A. 52:14F-1 to -23. Ibid.

A hearing was held via Zoom on December 2, 2020. Ibid. At the hearing, the Department presented testimony of Investigator Troy Dayton (“Investigator Dayton”). Ibid. GEM presented testimony of the owner of GEM, Daniel Grigonis (“Daniel”), and his wife, Ana Maria Grigonis (“Ana Maria”).⁴ Ibid. GEM submitted its post hearing summation on February 19, 2021, and the Department submitted its post hearing summation on March 8, 2021. Ibid.

Pursuant to Exec. Order No. 103 (Mar. 9, 2020) 52 N.J.R. 549(a) (Apr. 6, 2020), and Exec. Order No. 127 (Apr. 14, 2020) 52 N.J.R. 969(a) (May 4, 2020) the time to file an initial decision was extended until January 3, 2022. Ibid. The ALJ requested extensions to file an initial decision under N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8. Ibid. The record was reopened⁵ on October

³ The Initial Decision indicates that the OTSC was issued November 25, 2029, but this appears to be a typographical error.

⁴ Since both individuals share the last name Grigonis, they will be referred to in this Final Decision and Order by their first names to avoid confusion.

⁵ The Initial Decision does not indicate when the record was initially closed.

3, 2022, to allow the ALJ to review the hearing record, including transcripts. Ibid. The record was closed on August 30, 2024. Ibid.

THE ALJ'S FINDINGS OF FACT

The ALJ summarized the witness' testimony and found the witnesses to be credible. Id. at 3-6 (citing Carbo v. U.S., 314 F.2d 718 (9th Cir. 1963) (additional citations omitted)).

Investigator Troy Dayton

The ALJ stated that Investigator Dayton is an investigator with the Department. Id. at 4. The Licensing Bureau within the Department referred this matter to him to investigate the allegation of unlicensed activity. Ibid. Investigator Dayton stated that on June 27, 2019, he sent a demand letter to GEM wherein he requested that GEM provide information and documentation regarding its unlicensed activity for the time period in question, July 1, 2015 to February 28, 2019. Ibid. He requested copies of all executed New Jersey retail installment contracts and retail purchase agreements and a list of all the finance companies used for those transactions. Ibid.

On July 22, 2019, in response to Investigator Dayton's request, Ana Maria e-mailed Investigator Dayton two documents – the sales tax summary and sales tax report for the period of July 1, 2015 to February 28, 2019. Ibid. Ana Maria stated in the e-mail “the sales report you will show [sic] the total amount of cars sold in this period showing which were financed and not (non inhouse and wholesale). The sales tax report will show the list of cars sold and to whom in the period of time.” Ibid. (quoting Ex. P-7). The email also stated that “all the cars sold were financed through us.” Ibid.

The ALJ stated that Investigator Dayton testified that the sales tax report contained a list of GEM's transactions from July 1, 2015 to February 28, 2019, and showed all of the transactions summarized in the sales tax summary. Id. at 4-5. The sales tax summary and the sales tax report

did not contain all the information necessary for Investigator Dayton's investigation. Id. at 5. Specifically, these documents did not specify which vehicles were financed as opposed to bought in cash, and they did not reflect the cash price, the financed amount, and the finance charge of the financed sales. Ibid. Investigator Dayton then requested from Ana Maria a spreadsheet containing the missing information. Ibid.

The ALJ stated that Investigator Dayton testified that Ana Maria sent an email to him containing a spreadsheet report including the requested information on July 31, 2019. Ibid. The Department did not receive any consumer complaints against GEM, and there had not been any prior enforcement action by the Department against GEM. Ibid.

The ALJ stated that Investigator Dayton explained that in-house financing means that GEM used its own funds, and not third-party funds, to finance its auto sales. Id. at 4. The sales tax summary attached to Ana Maria's July 22, 2019 e-mail indicated that from July 2015 to March 2019, GEM financed 426⁶ auto sale transactions, and that the total financed amount of these loans was \$1,969,635.531, and the finance charges by GEM were \$503,688.16. Ibid.

Daniel

The ALJ stated that Daniel is the sole owner and principal of GEM. Id. at 5. Daniel maintained MVIS licenses and a sales finance company licenses with the Department for over 30 years as the owner of various auto dealerships. Ibid. Daniel did not know why GEM did not renew its license in 2015. Ibid. Daniel testified, "It's one of those things that, you know, I don't know. Maybe my wife was supposed to do it. Maybe I was supposed to do it. Maybe the- I didn't get

⁶ Investigator Dayton removed cash transactions and transactions more than \$10,000 that are not subject to RISA and 399 transactions were left. T47:3-7; 48:20-49:5; N.J.S.A 17:16C-1. The parties later stipulated that 394 automobiles were financed while GEM was unlicensed and subject to RISA. T199:7-23.

the mail. I don't know." Ibid. (quoting T114-19 to 22).⁷ Daniel further testified, "I -- I wish I could go back in time and pay the \$350 renewal fee because I've been doing this for 30 years. So I should know better. I should know better. So my issue is how can I be penalized like this for something -- that is a mistake that I made? It's -- it's a -- it's an honest mistake. There was no vicious action behind this. That's it." Ibid. (quoting T114-23 to 115-6.) Daniel testified that GEM lost \$348,007 on the loans that it issued without a license. Ibid. (citing T134-25 to 135-3). Daniel testified, "I take care of my customers, but half of the time I lose and that's the bottom line." Ibid. (quoting T136-4 to 5).

Ana Maria

The ALJ stated that Ana Maria is married to Daniel. Id. at 6. She testified that she has handled all of the clerical duties, such as paperwork, bookkeeping, payroll, sales taxes, and State licenses for GEM since 2002. Ibid. Ana Maria is not an owner or employee of GEM because she had a full-time job outside the business. Ibid. Ana Maria stated that in 2015 and then again in 2016,⁸ GEM did not renew its MVIS license because they never received a notification of renewal from the Department. Ibid. She stated that in November 2018, she realized that GEM's MVIS license had expired in 2015. Ibid.

The ALJ stated that Ana Maria testified that in November 2018, she sent an e-mail to the Department to inquire the procedure for reinstating GEM's MVIS license and was told that GEM needed to apply for a new license. Ibid. Ana Maria testified that she began the re-application

⁷ "T" refers to the transcript of the hearing conducted on December 2, 2020.

⁸ GEM's license renewal would not be due in 2016 because MVIS licenses are renewed every other year. N.J.A.C. 3:23-2.2. GEM would have renewed its license in 2015 and 2017.

process in late 2018, and submitted the application materials to the Department in February 2019. Ibid.

THE ALJ'S LEGAL ANALYSIS AND CONCLUSIONS

The ALJ stated that the Department, as the prosecuting party, bears the burden of proof of violation of a statute or regulation by a fair preponderance of the competent and credible evidence. Ibid. (citing In re Polk, 90 N.J. 550, 560 (1982)). A fair preponderance of the evidence is that evidence that is sufficient to assure reliability and to avoid the appearance of arbitrariness. Ibid. (citing Atkinson v. Parsekian, 37 N.J. 143 (1962)).

The ALJ stated that “No person shall hereafter engage in or continue to engage in the business of . . . motor vehicle installment seller in this State without first obtaining a license from the Commissioner as provided for in this Act.” Id. at 7 (quoting N.J.S.A. 17:16C-2). A “motor vehicle installment seller” is defined as “a dealer in motor vehicles, who is required to be licensed [by the New Jersey Motor Vehicle Commission] and who sells or offers to sell a motor vehicle to a retail buyer under a retail installment contract.” Ibid. (quoting N.J.S.A. 17:16C-1(h)). The ALJ concluded that financing automobile sales is within the definition of being in the “business of a motor vehicle installment seller,” which requires a license. Ibid.

The ALJ found that GEM was first licensed by the Department as an MVIS in 2010. Id. at 3. GEM failed to renew its MVIS license, and it expired on July 1, 2015. Ibid. Despite being unlicensed, GEM continued to finance automobile sales. Ibid. GEM obtained a new MVIS license on March 1, 2019. Ibid. During the unlicensed period, from July 1, 2015 to March 1, 2019, GEM financed 394 automobile sales. Ibid.

The ALJ found that subsequent to the hearing, GEM surrendered its MVIS license to the Department on May 11, 2021, and dissolved in 2021. Ibid.

The ALJ stated that GEM's defenses and arguments in mitigation that: 1) it was not certain if the Department sent renewal reminders; 2) it never received follow-up notices from the Department after the license expiration; 3) it filed an annual report and paid an assessment in 2016, and had no intention to evade the Department's oversight; 4) it did not benefit by not renewing the license; and 5) the Department did not incur losses from the non-renewal, and GEM did not profit from the unlicensed activity were irrelevant in determining that GEM violated the provisions of RISA. Id. at 7-8.

The ALJ concluded that GEM violated N.J.S.A. 17:16C-2 when it sold 394 automobiles with accompanying installment sales contracts between July 1, 2015 to February 19, 2019. Id. at 7.

Penalties Recommended by the ALJ

The ALJ stated that the Department could request a penalty of up to \$1,000 for each installment sales contract issued by GEM when it was not licensed to do so. Id. at 8 (citing N.J.S.A. 17:16C-55). In this matter, the Department could request a penalty of \$394,000. Ibid. Instead, the Department requested \$80,000.⁹ The ALJ concluded that the Department's requested fine of \$80,000 was appropriate under the factors set forth in Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123, 137-140 (1987).

EXCEPTIONS

Pursuant to N.J.A.C. 1:1-18.4(a), exceptions were due on October 1, 2024. Pursuant to N.J.A.C. 1:1-18.4(d), the parties' replies were due on October 8, 2024. The Department filed exceptions. GEM did not file exceptions and did not file a reply to the Department's exceptions.

⁹ During the hearing, the Department requested "the maximum penalty, revocation and fines..." T13:12-14. However, in its written summation, the Department requested \$80,000 and did not request license revocation or suspension.

Department Exceptions

The Department filed timely exceptions on October 1, 2024 (“Department Exceptions”). The Department agreed with the Initial Decision’s findings of fact, conclusions of law, and recommended penalties, but filed exceptions to correct typographical errors and “non-substantive inaccuracies” in the Initial Decision. Department Exceptions at 1.

The Department requested two changes be made to the caption. First, Commissioner Justin Zimmerman should be substituted in place of former Commissioner Marlene Caride in the caption. Ibid. Further, the Docket number was incorrect and should read BKI-01026-20, instead of BKI-01036-20. Ibid.

The Department requested several corrections to the Initial Decision’s Procedural History section. The Department stated that the OTSC was issued on November 25, 2019, not November 25, 2029. Ibid. (citing Initial Decision at 2). Further, GEM’s MVIS license expired on July 1, 2015, not July 1, 2025. Ibid. (citing Initial Decision at 2). The Department requested that the sentence that “[t]he Department seeks to revoke GEM Auto’s MVIS license . . . as stated in the [OTSC]” should be changed to: “The [OTSC] ordered GEM Auto to show cause why it should not be assessed civil penalties and license revocation.” Ibid. (quoting Initial Decision at 2). The Department stated that this change is necessary to clarify that the OTSC provided that the license may be subject to revocation, but the Department did not seek revocation in its post-hearing submission. Ibid. The Department also requested a new sentence be added to clarify that the Department did not request the revocation of the license in its post-hearing submission. Ibid. The Department explained that the Commissioner issued the OTSC, but the Department prosecuted the case and did not request that GEM’s license be revoked in its post-hearing submission. Ibid. The

Department also stated that the Initial Decision's citation to N.J.S.A. 17:C-2 should be changed to N.J.S.A. 17:16C-2. Ibid. (citing Initial Decision at 2).

The Department requested one change to the Initial Decision's Factual Discussion and Findings section. Ibid. The Department stated that the sentence "Respondent GEM Auto Sales is licensed by the Department as a MVIS . . ." should be corrected to "Respondent GEM Auto Sales was licensed by the Department as an MVIS until May 11, 2021." Ibid. (quoting Initial Decision at 3). This would accurately reflect that GEM surrendered its license and is no longer licensed as an MVIS. Ibid.

The Department requested one change to the Initial Decision's Legal Analysis and Conclusions of Law section. Ibid. The Department requested that the sentence that GEM "sold three 394 automobiles . . ." should be corrected to "sold 394 automobiles." Ibid. (quoting Initial Decision at 7).

The Department requested that a Final Order be issued reflecting these changes, and affirming the Initial Decision. Ibid.

LEGAL DISCUSSION

The Department bears the burden of proving the allegations in an Order to Show Cause by a preponderance of the competent, relevant, and credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as would lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Preponderance may be described as: "the greater weight of credible evidence in the case not necessarily dependent on the number of witnesses, but having the greater convincing power." State v. Lewis, 678 N.J. 47 (1975).

Allegations Against GEM

The OTSC alleges that that GEM was not licensed as an MVIS from July 1, 2015 to February 28, 2019 and during that time it engaged in selling automobiles with installment sales contracts.

Factual Findings

I ADOPT the ALJ's findings of fact that GEM was not licensed on July 1, 2015. Initial Decision at 3. The ALJ finds that GEM was unlicensed until March 1, 2019 and February 19, 2019. Initial Decision at 3, 7. I MODIFY to clarify that GEM was unlicensed from July 1, 2015 to February 28, 2019. Its license was effective on March 1, 2019. T15:12-17; Ex. P-1.

I ADOPT the ALJ's finding that while GEM was unlicensed, it financed 394 automobiles with installment sales contracts when it was unlicensed to do so. Initial Decision at 3, 7.

I also MODIFY the Initial Decision to accurately reflect that the OTSC ordered GEM to show cause why it should not be assessed civil penalties and license revocation. Initial Decision at 2. I MODIFY the Initial Decision's citation to N.J.S.A. 17:C-2 to N.J.S.A. 17:16C-2. Initial Decision at 2.

I MODIFY the ALJ's finding that GEM is licensed by the Department as a MVIS to find that GEM was licensed by the Department as an MVIS until May 11, 2021 when it surrendered its license to the Department. Initial Decision at 3; Ex. OAL-1.

Lastly, I MODIFY the Exhibit List to include a description of Exhibit D-3, which is GEM's 2010 annual sales report. The Exhibit List describes lists this exhibit as "Not presented." Initial Decision at 11. Exhibit D-3 was identified at T106:21-107:17 and moved into evidence at T129:7-9.

Count One –Unlicensed Activity

Count One of the OTSC alleges that while GEM was not licensed as an MVIS between July 1, 2015 to February 28, 2019, it sold 399 automobiles with installment sales contracts in violation of N.J.S.A. 17:16C-2, N.J.S.A. 17:16C-10(a)(1), (5), (6), and N.J.S.A. 17:16C-55.

Under N.J.S.A. 17:16C-2, no person shall engage in or continue to engage in the business of a MVIS without a license. Under N.J.S.A. 17:16C-10(a) (1), (5), and (6), the Commissioner may refuse to issue and may revoke, suspend, or refuse to renew a license if a person¹⁰ has violated RISA, demonstrated unworthiness, incompetence, bad faith or dishonesty in the transacting of business, or engaged in any other conduct which would be the cause for denial of the license. Under N.J.S.A. 17:16C-55, any person who engages in the business of a MVIS without having first obtained a license shall be liable to a penalty of not more than \$1,000 for each offense.

The ALJ found that GEM violated N.J.S.A. 17:16C-2 when it sold 394 automobiles with accompanying installment sales contracts between July 1, 2015 to February 19, 2019. Initial Decision at 7. As noted above, I MODIFY to clarify that GEM was unlicensed from July 1, 2015 to February 28, 2019, and it was actively licensed on March 1, 2019.

Accordingly, I find that GEM was not licensed as an MVIS from July 1, 2015 to February 28, 2019 and during that time, GEM financed 394 automobile sales. I ADOPT the ALJ's conclusion that this violated N.J.S.A. 17:16C-2, which prohibits unlicensed activity.¹¹

¹⁰ Person includes a corporation. N.J.S.A. 17:16C-1.

¹¹ The OTSC charges violations of N.J.S.A. 17:16C-10(a)(1), (5), and (6), which are grounds under which the Commissioner can suspend, revoke, or refuse to renew a license, and N.J.S.A. 17:16C-55, which gives the penalty of \$1,000 for each violation of RISA. These statutes are relevant to enforcement, and not conduct. Accordingly, I make no findings regarding whether GEM violated these provisions.

PENALTY AGAINST THE RESPONDENT

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). Under N.J.S.A. 17:16C-55, GEM may be fined up to \$1,000 for each installment sales contract that it issued when it was not licensed as an MVIS, or \$394,000.

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. These factors include: (1) the good faith or bad faith of the producer; (2) the producer'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. No one Kimmelman factor is dispositive for or against fines and penalties. See Kimmelman, 108 N.J. at 139 ("[t]he weight to be given to each of these factors by a trial court in determining . . . the amount of any penalty, will depend on the facts of each case"). However, the Initial Decision does not specifically analyze these factors.

The first Kimmelman factor addresses the good faith or bad faith of the violator. The Court should assess how egregious respondent's conduct was and whether he could have reasonably believed his conduct was legal. Kimmelman, 108 N.J. at 137. In addition, the court should consider respondent's conduct when it learned that its prior actions might be illegal. Ibid. GEM did not renew its MVIS license in 2015 and continued to engage in licensed activity. Initial Decision at 7. GEM was aware that it needed a license to enter into installment contracts and could not have reasonably believed its conduct was legal. However, when Ana Maria realized that GEM had neglected to renew its license and was operating without a license, she reached out to the

Department right away. T180:8-21. When told that GEM would need to apply for a new license, Ana Maria did so a few months later after preparing necessary reports and getting a financial statement from GEM's accountant. T180:15-182:15. I find that this factor mitigates in favor of a lower penalty when taking into account GEM's actions when it learned that its conduct was illegal. GEM should have renewed its license. However, GEM reacted quickly and appropriately upon realizing that it was unlicensed as an MVIS. When Ana Maria discovered that GEM was unlicensed, she immediately reached out to the Department, instead of trying to hide the unlicensed activity or continuing to operate without a license. Further, when informed that GEM would need to apply for a new license, GEM did so after preparing the necessary reports and getting a statement from its accountant.

The second Kimmelman factor is the ability of the respondent to pay the penalties imposed. The greater a defendant's income and financial resources, the larger a penalty will have to be to deter unlawful behavior. Kimmelman, 108 N.J. at 137. In its 2019 annual report, the most recent annual report submitted into evidence, GEM indicated that it issued 41 loans totaling \$274,858. (Ex. P-12). However, it was necessary for GEM to close for approximately three months in 2020 due to COVID where it could not operate because it was not an online seller and people would have to physically come to the dealership. T201:16-202:14. Further, GEM surrendered its MVIS license to the Department on May 11, 2021, and dissolved in 2021. Initial Decision at 7. Accordingly, I find that this factor is neutral regarding the appropriate penalty amount.

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. Between July 1, 2015 and February 28, 2019, while GEM was unlicensed, it financed \$1,858,305 in its sales. T133:16-134:2; T200:20-

24; Ex. D-14. GEM collected \$2,332,970 from these transactions. T205:12-13. GEM did not make that much in profit, because it still had operating expenses, such as taxes, insurance, employee salaries, and utilities. T136:11-17; T205:14-206:17; T207:25-208:21; Ex. D-14. I find that this factor weighs in favor of a moderate penalty.

The fourth Kimmelman factor addresses the injury to the public. While injury to the public may sometimes be equivalent to the profits obtained by the defendant through its illegal conduct, less tangible forms of harm can also be considered. Kimmelman, 108 N.J. at 138. The public is harmed whenever an unlicensed entity engages in conduct that requires a license because they are operating outside Department's purview. 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. GEM was unlicensed from July 1, 2015 to February 28, 2019. This is over three years, and I find that this factor 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. GEM has not faced any criminal or treble-damage actions and therefore the imposition of a higher civil 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.

Kimmelman, 108 N.J. at 139. GEM has not had any other violations, or consumer complaints. T61:1-7. This factors weighs in favor of a lower monetary penalty.

After weighing the Kimmelman factors, I MODIFY the ALJ's recommendation that GEM be fined \$80,000 for violating RISA. I find that penalties in the amount of \$50,000 are appropriate. These penalties are necessary and appropriate under the above Kimmelman analysis given GEM's conduct. GEM mistakenly allowed its license to expire and was unlicensed for over three years, during that time it performed 394 transactions that required licensure as an MVIS. However, upon discovering that GEM had not renewed its license, Ana Maria immediately reached out to the Department to rectify the situation. When informed that GEM needed to reapply for a license, it did so in a timely manner after gathering the necessary documentation and getting a statement from its accountant.

CONCLUSION

Having reviewed the Initial Decision, the Department's 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 MODIFY the ALJ's conclusions and hold that the Department proved that GEM was not licensed as an MVIS from July 1, 2015 to February 28, 2019. I ADOPT the ALJ's conclusion that during the time when GEM was unlicensed, it performed 394 transactions that required licensure as an MVIS and in doing so violated N.J.S.A. 17:16C-1.

I MODIFY the recommended civil monetary penalty and ORDER that GEM is responsible for an administrative penalty of in the amount of \$50,000.

It is so ORDERED on this 3rd day of February 2025.



Justin Zimmerman
Commissioner

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