

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of Banking)
and Insurance, State of New Jersey, to fine,)
suspend and/or revoke the insurance license) **FINAL ORDER**
of Max E. Nozek, Reference No. 1592081,)
and The Nozek Group, LLC, Reference No.)
1629667.

TO:	Max E. Nozek 1765 Greenwood Rd. Toms River, New Jersey 08753	The Nozek Group, LLC c/o Max E. Nozek 1765 Greenwood Road Toms River, New Jersey 08753
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THIS MATTER, having been opened by the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon issuance of Order to Show Cause E24-03 (the “OTSC”) alleging that Max E. Nozek (“Nozek”), and The Nozek Group, LLC (“Nozek Group”) (collectively, “Respondents”) may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Nozek was formerly licensed by the Department as a resident insurance producer in the State of New Jersey, pursuant to N.J.S.A. 17:22A-32(a), until October 4, 2017 when his license was voluntarily surrendered; and

WHEREAS, Nozek Group was formerly licensed by the Department as a resident business entity producer, pursuant to N.J.S.A. 17:22A-32(b), until its license was voluntarily surrendered on October 4, 2017; and

WHEREAS, Respondents are subject to the provisions of the New Jersey Insurance Producer Licensing Act, N.J.S.A. 17:22A-1 to -57 (the “Producer Act”), the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 to 11:17D-2.8, and the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -30 (the “Fraud Act”); and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(d), the Commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by the Producer Act and Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes against any person who is under investigation for or charged with a violation of the Producer Act or Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes even if the person’s license or registration has been surrendered or has lapsed by operation of law; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(2), an insurance producer shall not violate any insurance laws, or violate any regulation, subpoena or order of the Commissioner or of another state’s insurance regulator; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(5), an insurance producer shall not intentionally misrepresent the terms of an actual or proposed insurance contract, policy or application for insurance; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(6), an insurance producer shall not be convicted of a felony or crime of the fourth degree or higher; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(7), an insurance producer shall not have admitted to or been found to have committed any insurance unfair trade practice or fraud; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(8), an insurance producer shall not use fraudulent, coercive or dishonest practices, or demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business in this State or elsewhere; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(10), an insurance producer shall not forge another's name to an application for insurance or to any document related to an insurance transaction; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(16), an insurance producer shall not commit any fraudulent act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-32(b)(2), a business entity is to designate a licensed insurance producer responsible for the business entity's compliance with the insurance laws, rules and regulations of this State; and

WHEREAS, pursuant to N.J.A.C. 11:1-12.2(a), active officers shall be held individually responsible for all insurance related conduct of the corporate licensee; and

WHEREAS, pursuant to N.J.A.C. 11:17A-1.6(c), licensed partners, officers and directors, and all owners with an ownership interest of 10 percent or more in the organization shall be held responsible for all insurance related conduct of the organization licensee, any of its branch offices, its other licensed officers or partners, and its employees; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a), the Commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty for violating the Producer Act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45(c), any person violating the Producer Act is subject to a penalty of \$5,000.00 for the first offense and up to \$10,000.00 for each subsequent offense; additionally the Commissioner may order restitution of moneys owed any person and reimbursement of costs of the investigation and prosecution; and

WHEREAS, pursuant to N.J.S.A. 17:33A-4(a)(3), no person shall conceal or knowingly fail to disclose the occurrence of any event which affects any person's initial or continued right or

entitlement to (a) any insurance benefit or payment or (b) the amount of any benefit or payment to which the person is entitled; and

WHEREAS, pursuant to N.J.S.A. 17:33A-4(a)(4)(b), no person shall make any written or oral statement, intended to be presented to any insurance company or producer for the purpose of obtaining an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to an insurance application or contract; and

WHEREAS, pursuant to N.J.S.A. 17:33A-5(a) and (c), violations of the Fraud Act subject the violator to a civil and administrative penalty not to exceed \$5,000.00 for the first offense, not to exceed \$10,000.00 for the second offense and not to exceed \$15,000.00 for each subsequent offense; moreover, the Commissioner may issue a final order recovering costs of prosecution, including attorneys' fees, in accordance with N.J.A.C. 11:16-7.9(c); and

WHEREAS, pursuant to N.J.S.A. 17:33A-5.1, any person who is found in any legal proceeding to have committed insurance fraud shall be subject to a surcharge in the amount of \$1,000.00; and

WHEREAS, on January 8, 2024, the Commissioner issued the OTSC, alleging that Respondents violated various New Jersey insurance laws by as set forth in the following:

ALLEGATIONS COMMON TO ALL COUNTS\

IT APPEARING, that, at all relevant times, Respondents were appointed agents with S.USA Life Insurance Company ("S.USA Life") and Americo Financial Life and Annuity Insurance Company ("Americo") until they were terminated from S.USA Life, effective November 6, 2017, and from Americo, effective August 3, 2017, respectively; and

IT FURTHER APPEARING, that between June 14, 2017, and August 2, 2017, Respondents submitted at least twenty-two (22) life insurance applications to Americo without the knowledge or consent of the applicants, receiving a total commission of \$35,299.30 from Americo; and

IT FURTHER APPEARING, that between July 19, 2017, and September 6, 2017, Respondents submitted at least nineteen (19) life insurance applications to S.USA Life without the knowledge or consent of the applicants, receiving a total commission of \$30,913.50; and

IT FURTHER APPEARING, on September 3, 2019, Nozek was convicted of third-degree theft by deception as a result of his submission of life insurance applications without the knowledge or consent of the applicants; and

COUNT ONE
(Producer Act)

IT FURTHER APPEARING, that Respondents knowingly and willingly produced and submitted forty-one (41) separate fraudulent life insurance applications, without the consent and knowledge of proposed applicants, to obtain advanced commission payments, in violation of N.J.S.A. 17:22A-40(a)(2), (5), (6), (7), (8), (10) and (16); and

IT FURTHER APPEARING, that each of the forty-one (41) instances where Respondents submitted life insurance policies without the consent and knowledge of proposed applicants constitutes a separate violation; and

COUNT TWO
(Producer Act)

IT FURTHER APPEARING, that Nozek, pursuant to a criminal investigation conducted by the Office of the Insurance Fraud Prosecutor, was charged and sentenced to third degree-theft by deception, in violation of N.J.S.A. 17:22A-40(a)(2), (6), (8); and

COUNT THREE
(Producer Act)

IT FURTHER APPEARING, that Nozek, as Nozek Group's DLRP, owner and/or manager, is responsible for the violations alleged of Nozek Group pursuant to N.J.S.A. 17:22A-32(b)(2), N.J.A.C. 11:1-12.2(a), and N.J.A.C. 11:17A-1.6(c); and

COUNT FOUR
(Fraud Act)

IT FURTHER APPEARING, Respondents, knowingly submitted forty-one (41) separate fraudulent life insurance applications, without the consent and knowledge of proposed applicants, to obtain advanced commission payments, in violation of N.J.S.A. 17:33A-4(a)(3) and -4(a)(4)(b); and

IT FURTHER APPEARING, that each of the forty-one (41) instances where Respondents submitted life insurance policies without the consent and knowledge of proposed applicants constitutes a separate violation; and

IT FURTHER APPEARING, Respondents were given notice of the aforesaid charges and an opportunity to contest the charges at a hearing pursuant to the OTSC and failed to do so; and

IT FURTHER APPEARING, as set forth in the Certification of William Vaughan, attached as Exhibit A, by cover letter dated January 10, 2024, the Order to Show Cause No. E24-03 was mailed to Nozek via certified mail, return receipt requested, and regular mail to Nozek's then-current home address, based on a public information search, at 100 Shoal Road, Unit 108, Toms River, New Jersey 08755-3293, and neither was returned as undeliverable; and

IT FURTHER APPEARING, as set forth in the Certification of William Vaughan, attached as Exhibit A, by cover letter dated January 10, 2024, the Order to Show Cause No. E24-03 was mailed to Nozek Group via certified mail, return receipt requested, and regular mail to Nozek's then-current home address, based on a public information search, at 100 Shoal Road, Unit 108, Toms River, New Jersey 08755-3293, and neither was returned as undeliverable; and

IT FURTHER APPEARING, mailing of the OTSC by regular and certified mail to Respondents constitutes lawful service, pursuant to N.J.A.C. 11:17D-2.1(a)3; and

IT FURTHER APPEARING, Respondents failed to provide a written response to the charges contained in the OTSC within twenty days as provided by N.J.A.C. 11:17D-2.1(d)1, and

therefore have waived their right to a hearing to contest these charges and the charges are deemed admitted under N.J.A.C. 11:17D-2.1(b)1; and

IT FURTHER APPEARING, in Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987) the Supreme Court established seven factors to be considered in determining the imposition of civil fines in administrative proceedings (“Kimmelman factors”); and

IT FURTHER APPEARING, the seven Kimmelman factors are as follows: (1) the good or bad faith of the defendant; (2) defendant’s ability to pay a civil fine; (3) the amount of profits obtained from the illegal activity; (4) the injury to the public; (5) the duration of the misconduct; (6) the existence of criminal or treble damages actions; and (7) the past violations of defendant; and

IT FURTHER APPEARING, the Kimmelman factors apply to this matter as follows: (1) Respondents showed bad faith by submitting, at least, forty-one (41) fraudulent life insurance applications; (2) Respondents have not provided any evidence of their inability to pay a civil fine; (3) Respondents received \$66,212.80 in advanced commissions for submitting said fraudulent life insurance applications; (4) there was injury to the public because Respondents improperly used personal identifiable information without knowledge or consent to falsely apply consumers for life insurance that was not requested by the applicants; (5) Respondents’ illegal activity occurred from June 14, 2017 to September 6, 2017; (6) criminal actions were filed against Nozek regarding his illegal activity; and (7) Respondents had no past violations; and

NOW, THEREFORE, IT IS on this 31st day of July, 2024:

ORDERED, that the charges contained in the OTSC are deemed admitted by Respondents due to their failure to respond to the charges, pursuant to N.J.A.C. 11:17D-2.1(b)(1); and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-40, and N.J.A.C. 11:17D-2.1(b)(2), the insurance producer license of Nozek is **REVOKED** effective upon the execution of this Final Order; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-40, and N.J.A.C. 11:17D-2.1(b)(2), the insurance producer license of Nozek Group is **REVOKED** effective upon the execution of this Final Order; and

IT IS FURTHER ORDERED, that Respondents shall be responsible for the payment totaling \$452,377.02 for the violations of the Producer Act, Fraud Act, and other insurance laws cited above as follows:

IT IS FURTHER ORDERED, that Respondents, jointly and severally, shall be responsible for the payment of civil penalties totaling \$200,000.00 for the Producer Act violations as described in Count One of the Order to Show Cause; and

IT IS FURTHER ORDERED, that Respondents, jointly and severally, shall be responsible for the payment of civil penalties totaling \$5,000.00 for the Producer Act violation described in Count Two of the Order to Show Cause; and

IT IS FURTHER ORDERED, that Respondents, jointly and severally, shall be responsible for the payment of civil penalties totaling \$200,000.00 for the Fraud Act violations as described in Count Four of the Order to Show Cause; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c) and N.J.A.C. 11:1-32.4(b)(20), Respondents shall reimburse the Department of Banking and Insurance, Division of Insurance Enforcement, for the costs associated with the investigation and prosecution of this matter, as evidenced by the Certification of Costs by Investigator Matthew Gervasio, attached as

Exhibit B, totaling \$1,425.00. The Commissioner has reviewed the investigative costs application and finds the amount of time to be reasonable; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:33A-5c, Respondents, jointly and severally, shall reimburse the Department of Banking and Insurance, Bureau of Fraud Deterrence, for the attorneys' fees associated with the investigation and prosecution of this matter, as evidenced by the Certification of William E. Vaughan, attached as Exhibit A, totaling \$5,174.00. The Commissioner has reviewed the attorneys' fees application and finds the amount of time to be reasonable; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:33A-5.1, Nozek, individually, shall pay the Department of Banking and Insurance, Bureau of Fraud Deterrence, a statutory fraud surcharge in the amount of \$1,000.00; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:33A-5.1, Nozek Group, individually, shall pay the Department of Banking and Insurance, Bureau of Fraud Deterrence, a statutory fraud surcharge in the amount of \$1,000.00; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c) and N.J.S.A. 17:33A-26, Respondents, jointly and severally, shall pay Americo Financial Life and Annuity Insurance Company restitution in the amount of \$9,656.51; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c) and N.J.S.A. 17:33A-26, Respondents, jointly and severally, shall pay S. USA Life Insurance Company restitution in the amount of \$29,121.51; and

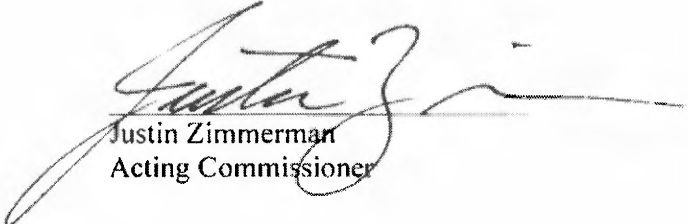
IT IS FURTHER ORDERED, that Respondents shall pay the above fines and costs totaling \$452,377.02 by remitting full payment to the Commissioner of Banking and Insurance, State of New Jersey, 20 West State Street, P.O. Box 329, Trenton, New Jersey 08625, Attention: Virgil

Dowtin, Chief of Investigations by certified check, cashier's check or money order made payable to the "State of New Jersey, General Treasury," within ten (10) days from the date of service of this Order; and

IT IS FURTHER ORDERED, that in the event full payment of the civil penalty, restitution and costs is not made, the Commissioner may exercise any and all remedies available by law, including but not limited to recovery of any unpaid penalties, in accordance with the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 to -12; and

IT IS FURTHER ORDERED, that the civil penalty in this Final Order is imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of the public health, safety and welfare, and is not intended to constitute a debt which may be limited or discharged in a bankruptcy proceeding; and

IT IS FURTHER ORDERED, that the provisions of this Final Order represent a final agency decision and constitute a final resolution of the allegations contained in the OTSC.


Justin Zimmerman
Acting Commissioner