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FILED

April 3, 2026

HON. BRUCE J. KAPLAN, P.J.Cv.

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY
DOCKET NO. MID-L-003042-25

SUSAN OCHS, ACTING)
COMMISSIONER OF THE)
NEW JERSEY DEPARTMENT OF)
BANKING AND INSURANCE,¹)
)
Plaintiff,)
)
v.)
)
EBENEZER DIAZ-CARMONA, a/k/a)
EBENEZER DIAZ)
)
Defendant.)

Civil Action

**ORDER OF FINAL JUDGMENT
BY DEFAULT**

THIS MATTER having been opened to the Court on the application of Jennifer Davenport, Attorney General of New Jersey, (by Brian R. Fitzgerald, Deputy Attorney General, appearing), attorney for Plaintiff, Susan Ochs, Acting Commissioner of the New Jersey Department of Banking and Insurance (“Plaintiff”), on a motion for final judgment by default, and the Court having considered the moving papers, and for good cause having been shown; and

¹ Pursuant to R. 4:34-4, the caption has been revised to reflect the current Acting Commissioner of the Department.

Defendant, Ebenezer Diaz-Carmona a/k/a Ebenezer Diaz (“Defendant”), having been duly served with a copy of the Summons and Complaint in the above-captioned action, and default having been entered for Defendant’s failure to appear, answer, or otherwise defend;

This Court now finds that Defendant violated the Fraud Act by falsely representing to Progressive Garden State Insurance Company (“Progressive”) on an application (“Application”) for a boat insurance policy (“Policy”) for his Yamaha GP1800 Jet Ski (“Jet Ski”) that the Jet Ski was seaworthy when, in fact, it was not, in violation of N.J.S.A. 17:33A-4(a)(4)(b) and -4(a)(5); (ii) falsely representing to Progressive during a telephone call on October 9, 2025 in support of a damage claim (“Claim”) that there was no damage to the Jet Ski prior to an accident (“Accident”) when, in fact, there was damage to the Jet Ski prior to the respective dates of the Application, the inception of the Policy, and the Accident; and (iii) during a telephone call with Progressive on October 29, 2019, during which call, when Progressive asked about damage to the Jet Ski that had been patched, Defendant falsely represented to Progressive that an individual at the Yamaha dealership from which he purchased the Jet Ski had performed the patch job when, in fact, Defendant performed the patch job prior to the respective dates of the Application, the inception of the Policy, and the Accident; and

IT IS on this 3rd day of April, 2026,

ORDERED that Plaintiff’s Motion for Default Judgment is hereby **GRANTED**; and it is further

ORDERED that Final Judgment is entered in the amount of \$24,079.00 against Defendant Ebenezer Diaz-Carmona a/k/a Ebenezer Diaz, and in favor of Plaintiff, consisting of \$15,000.00 in civil penalties for three (3) violations of the Fraud Act pursuant to N.J.S.A. 17:33A-5(b); attorneys’ fees of \$8,000.00 pursuant to N.J.S.A. 17:33A-5b; costs of service in the amount of

\$79.00 pursuant to N.J.S.A. 17:33A-5b; and \$1,000.00 constituting the statutory fraud surcharge pursuant to N.J.S.A. 17:33A-5.1, which is imposed for violations of the Fraud Act in addition to any other penalty, fine or charge imposed pursuant to law; and it is further

ORDERED that a copy of this Order shall be served by Plaintiff by regular and certified mail, return receipt requested, AND recognized overnight delivery service (e.g., Fed Ex, UPS, etc.) upon Defendant Ebenezer Diaz-Carmona a/k/a Ebenezer Diaz, at their last known address within seven (7) days of the date hereof; and it is further

ORDERED that service of this Order shall be deemed effectuated upon all parties upon its upload to eCourts. Pursuant to Rule 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of the date of this order.

UNOPPOSED

151 Bruce J. Kaplan

Honorable Bruce J. Kaplan P.J.Cv.

STATEMENT OF REASONS

This matter comes before the Court by way of Plaintiff's Motion to Enter Default Judgment against Defendant Ebenezer Diaz-Carmona, for the sum certain of \$24,079.00, which includes \$8,000.00 in attorneys' fees. No opposition was filed.

By way of relevant procedural history, a Complaint was filed on May 20, 2025. Thereafter, on October 6, 2025, the Summons and Complaint were served upon Ebenezer Diaz-Carmona by substitute service via certified and regular mail, as well as Fed Ex delivery service. In this matter, Plaintiff alleges Defendant has committed three (3) violations of the New Jersey Insurance Fraud Prevention Act N.J.S.A. 17:33A-1 to -30 ("Fraud Act").

First, Plaintiff alleges Defendant falsely represented to Progressive Garden State Insurance Company on a August 19, 2019 application for a boat insurance policy that the Yamaha Jet Ski was seaworthy when it was not, in violation of N.J.S.A. 17:33A-4(a)(4)(b) and -4(a)(5). Second, Plaintiff alleges during an October 9, 2019 telephone call regarding a damages

claim, that Defendant falsely represented to Progressive that there were no damages to the Jet Ski prior to the insurance application being filed or the alleged accident that occurred on October 8, 2019. Last, it is alleged that on an October 29, 2019 phone call, Defendant falsely represented to Progressive that the Yamaha dealership which had sold Defendant the Jet Ski, performed repairs, when, in fact, Defendant performed the patch job prior to filing an application for the insurance policy with Progressive.

Accordingly, Plaintiff seeks to enforce penalties of the New Jersey Insurance Fraud Prevention Act. Plaintiff represents violations of the Fraud Act subject the violator to a civil penalty of up to \$5,000.00 for the first offense, up to \$10,000.00 for the second offense, and up to \$15,000.00 for each subsequent offense. N.J.S.A. 17:33A-5(b). Although Plaintiff could seek civil penalties in the amount of \$30,000.00 for three (3) violations, Plaintiff seeks a single \$15,000.00 civil penalty for the material misstatements made by Defendant to Progressive. Plaintiff additionally represents court costs and reasonable attorneys' fees are mandated by the Fraud Act for legal services provided in enforcing the statute. N.J.S.A. 17:33A-5(b). Accordingly, Plaintiff argues it is entitled to compensation in the amount of \$8,000.00 for legal services and costs of service in the amount of \$79.00. Finally, Plaintiff represents pursuant to N.J.S.A. 17:33A-5.1, a person who is found in a legal proceeding to have committed insurance fraud shall be subject to a statutory fraud surcharge in the amount of \$1,000.00.

Plaintiff therefore moves pursuant to R. 4:43-2, to enter default judgment in the amount of \$24,079.00 against Defendant Ebenezer Diaz-Carmona.

As to the present date, Defendant has failed to file an answer or other responsive pleading to the Summons or Complaint and has not requested an extension of time within which to respond. On November 18, 2025, Default was entered against Defendant by the Clerk of the Court. Thereafter, on March 4, 2026, Plaintiff filed the instant motion to enter Default Judgment. Subsequently, on March 20, 2026, the Court issued a clerk notice advising that Plaintiff must upload a supplemental certification as to service of the instant motion upon Defendant, stating whether the certified and regular mail was received and served at the last known address. On March 24, 2026, Plaintiff uploaded said supplemental certification providing that notice of the certified mail was left for Defendant at their last known address, and Defendant has not claimed the certified mail, and the regular mail has not been returned.

After further review, the Court will be granting this motion. In so granting, the Court notes no opposition was filed despite service of this motion on the Defendant. Moreover, based on the representations as to Defendant's false or misleading statements, the Court finds Defendant violated N.J.S.A. 17:33A-4(a)(4)(b) and -4(a)(5) of the the New Jersey Insurance Fraud Prevention Act.

Sum Certain

If the Plaintiff's claim against a defendant is for a sum certain or for a sum that can by computation be made certain, the Court requires an affidavit setting forth a particular statement of the items of the claim, the amounts and dates, the calculated amount of interest, the payments or credits, if any, the net amount due, and the name of the original creditor if the claim was acquired by assignment. R. 6:6-3. The affidavit certifying as to the sum certain must be made by a personal representative with firsthand knowledge of the amount due and owing. R. 1:6-6. If the Court is satisfied with the proofs provided as to the sum certain, the Court may elect not to hold a proof hearing. R. 4:43-2.

Within the present motion, Plaintiff provided a Certification issued on March 4, 2026 by Lisa Yildiz, a civil investigator employed by the New Jersey Department of Banking and Insurance, Bureau of Fraud Deterrence, and a personal representative with firsthand knowledge. See LCV2026527094. In the certification, it is represented that Defendant made false or misleading statements in violation of the New Jersey Insurance Fraud Prevention Act N.J.S.A. 17:33A-1 to -30. Plaintiff additionally provided a Certification issued on March 4, 2026 by Brian R. Fitzgerald, Deputy Attorney General, assigned to represent Plaintiff, Susan Ochs, Acting Commissioner of the New Jersey Department of Banking and Insurance. See LCV2026527094. Within the certification, it is represented Defendant is liable for \$24,079.00, consisting of \$15,000.00 in civil penalties for three (3) violations of the Fraud Act pursuant to N.J.S.A. 17:33A-5b; attorneys' fees of \$8,000.00 pursuant to N.J.S.A. 17:33A-5b; and \$1,000.00 per the statutory fraud surcharge pursuant to N.J.S.A. 17:33A-5.1.

Plaintiff alleges Defendant violated N.J.S.A. 17:33A-4(a)(4)(b) and -4(a)(5) by falsely representing on an August 19, 2019 application for a boat insurance policy that the Yamaha Jet Ski was seaworthy when it was not. Second, it is represented on an October 9, 2019 telephone call regarding a damages claim, Defendant concealed relevant evidence or falsely represented to Progressive that there were no damages to the Jet Ski prior to the filing of the insurance

application or the alleged October 8, 2019 accident. Finally, Plaintiff alleges that during an October 29, 2019 phone call with Progressive, Defendant falsely represented that the Jet Ski was repaired by the Yamaha dealership which had sold Defendant the vehicle, when Defendant had in fact performed the repairs himself prior to filing an application for the insurance policy.

In furtherance of these allegations, Plaintiff has provided a transcript of Defendant's December 23, 2019, in-person sworn statement with a Progressive Investigator regarding the damages claim. See Exhibit C. During the recorded interview, Defendant admitted he performed the repairs on the Jet Ski himself prior to the respective dates of the insurance policy application, the inception of the policy, and the alleged accident, as he did not have an insurance policy for the vehicle at the time it was damaged. See Exhibit C (46, 49-52). In a letter dated January 31, 2020, Progressive denied Defendant's damages claim due to his false representations concerning the damage to the jet ski. See Exhibit I. Based on the proofs and the certifications provided, the Court finds that Defendant committed three separate violations of The New Jersey Insurance Fraud Prevention Act, when he falsely represented to Progressive on three separate occasions that no damage occurred to the jet ski prior to the filing of his insurance policy application, and that he did not repair the jet ski himself. Accordingly, Defendant is liable for the minimum statutory penalty for each violation.

The New Jersey Insurance Fraud Prevention Act mandates that penalties shall be deposited to The New Jersey Automobile Full Insurance Underwriting Association and Market Transition Facility Auxiliary Fund, which is administered by the Commissioner. N.J.S.A. 17:33A-5e. The Fraud Act provides that if a "person violates section 4 of P.L.1983, c.320 (C.17:33A-4) the penalty shall be \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for each subsequent violation." N.J.S.A. 17:33A-5b. Based on the certifications provided, Defendant has committed three separate violations of N.J.S.A. 17:33A-4. Defendant is therefore liable for the minimum penalty of \$5,000 for each violation. Similarly, the Fraud Act states that "a 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." N.J.S.A. 17:33A-5.1. Accordingly, Defendant is liable for \$15,000.00 due to three violations of the Fraud Act, and \$1,000.00 in surcharges, resulting in an amount of \$16,000.00 due and owing to Plaintiff.

The March 4, 2026 Certification additionally calculates attorneys' fees in the amount of \$8,000.00 in accordance with R. 4:42-9. See LCV2026527094. The Certification represents that

pursuant to the New Jersey Insurance Fraud Prevention Act, reasonable attorneys' fees and Court costs shall be awarded to the commissioner for litigation resulting from violations of the statute. N.J.S.A. 17:33A-5(b). Additionally, the Certification provides a Schedule of Attorneys' Fees established by the New Jersey Department of Law and Public Safety, Division of Law that provides a uniform hourly rate of compensation for legal staff. After review of the certification provided by Plaintiff's counsel and in applying same to the factors in RPC 1.5, the Court is satisfied that the attorneys' fees sought are reasonable under the circumstances.

Accordingly, the total amount due and owing is \$24,079.00, which includes \$8,000.00 in attorneys' fees.

Proof of Service

Per R. 4:43-2, the party moving for default judgment is required to serve the defendant with notice of motion. Service upon a party of such papers notifying a defendant of entry of default judgment shall be made by personal service or by registered or certified mail, return receipt requested, and simultaneously by ordinary mail to the party's last known address. R. 1:5-2 see also R. 4:4-4. If the defendant fails to respond, New Jersey requires that the moving party file a certification of service that the notice was sent to the last known address of the defendant. R. 1:5-3.

In the present case, on March 24, 2026, Plaintiff uploaded a supplemental certification providing proof of service of the instant motion, via regular and certified mail with return receipt requested, upon Defendant Ebenezer Diaz-Carmona. See LCV2026753714. In same certification, Plaintiff states that a notice of the certified mail was left for Defendant, and Defendant has not claimed the certified mail, and the regular mail has not been returned. The Court is persuaded that 6 Camner Avenue, Apartment 3, New Brunswick, NJ 08901 is Defendant Ebenezer Diaz-Carmona's last known address as the Summons and Complaint were successfully served upon Defendant by certified and regular mail, as well as Fed Ex delivery service, at same address. Moreover, Plaintiff represents that the New Jersey Bureau of Fraud Deterrence conducted a public records search via the New Jersey Motor Vehicle Commission and the LexisNexis Smartlinks Person Report, which confirm at all relevant times Defendant resided and currently resides at same address. See LCV2026753714.

Affidavit of Non-Military Service

Before entry of judgment by default, New Jersey Court Rules require an affidavit setting forth facts showing that the defendant is not in military service. Unless based on facts admissible in evidence, the affidavit shall have attached to it a statement from the Department of Defense or from each branch of the armed forces that the defendant is not in the military service. R. 1:5-7.

Attached to Plaintiff's motion papers is a certification of Defendant Ebenezer Diaz-Carmona's non-military service and the statement from the Department of Defense as required by R. 1:5-7. See LCV2026527094.

For the reasons stated, Plaintiff's motion to enter default judgment is granted in the amount of \$24,079.00, which includes \$8,000.00 in attorneys' fees.