ORDER NO.: E22-23

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DOCKET NO.: BKI-0040-19
AGENCY DOCKET NO.: OTSC #E18-54

MARLENE CARIDE, COMMISSIONER, NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE, Petitioner, v. PAUL B. KUMAR, Respondent.	)	FINAL DECISION AND ORDER

This matter comes before the Commissioner of the Department of Banking and Insurance ("Commissioner") pursuant to the authority of N.J.S.A. 52:14B-1 to -31, N.J.S.A. 17:1-15, the New Jersey Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48 ("Producer Act"), the New Jersey Fraud Prevention Act, N.J.S.A. 17:33A-1 to -30 ("Fraud Act"), and all powers expressed or implied therein, for the purposes of reviewing the November 29, 2021 Initial Decision ("Initial Decision") of Administrative Law Judge Hon. Jacob S. Gertsman ("ALJ"). In the Initial Decision, the ALJ found in favor of the Department of Banking and Insurance ("Department"), against the Respondent Paul B. Kumar ("Respondent") on both counts of the Department's Order to Show Cause No. E18-54 ("OTSC"), and recommended revocation of the Respondent's insurance producer license, $10,000 in fines for violations of the Producer Act, $10,000 in fines for violations of the Fraud Act, a $1,000 Fraud Act surcharge, $9,774.25 for the costs of investigation, and $35,000 for attorneys' fees, for a total of $65,774.25.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On May 25, 2018, the Department issued the OTSC against the Respondent which sought to revoke the Respondent's insurance producer license, impose civil monetary penalties, costs of investigation, and attorneys' fees for violations of the Producer Act and the Fraud Act. In the OTSC, the Department alleges that the Respondent engaged in the following activities in violation of the laws of this State:

> Count One: Respondent submitted 16 insurance policy applications to an insurer, and did not witness the signature of the prospective insured, did not have a face to face meeting with the prospective insured with regard to the application before submitting it, and forged the prospective insured's signature on the application, in violation of N.J.S.A. 17:22A-40(a)(2), (5), (7), (8), (10), (16) and N.J.A.C. 11:17A-4.2; and
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> Count Two: Respondent submitted 16 insurance policy applications to an insurer for the purpose of obtaining an insurance policy, knowing that each of these applications contained a forged signature of the prospective insured, and other false or misleading information concerning any fact or thing material to the application of contract in violation of N.J.S.A. 17:33A-4(a)(3) and N.J.S.A. 17:33A-4(a)(4)(b).

On July 25, 2018, the Respondent filed an Answer and requested a hearing. The Department transmitted the matter as a contested case to the Office of Administrative Law ("OAL") on May 4, 2018, 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. After several phone status conferences and adjournments, the hearing was held virtually on August 12, 2020, August 13, 2020, August 19, 2020, and September 3, 2020. Id. at 2-3. After the hearing, the parties submitted post-hearing briefs and the record was closed on September 7, 2021. Id. at 3.

THE ALJ'S FINDINGS OF FACT

Background

The ALJ found that the Respondent is currently a licensed insurance producer in the State of New Jersey, having first obtained his license on October 1, 2008. Initial Decision at 4.

On August 3, 2015, the Respondent began his employment as a Territorial Manager with Combined Insurance Company ("Combined")[1] by entering into an employment contract with Combined. Ibid. The Respondent's employment relationship with Combined provided for a base salary of $500 and an additional $250 a week for enrollment in a Combined Territory Manager Subsidy Bonus Program and commissions based upon his personal sales of insurance. Ibid.

At the beginning of his employment with Combined, the Respondent received training at the Company's headquarters in Chicago which included extensive training on the use of iPads for submitting insurance applications. Id. at 38. During his employment at Combined, all agents were issued an iPad. Ibid. The Respondent did not express any difficulty using the iPad to submit insurance applications, and he informed his supervisor, Nicholas Catalano ("Catalano"), that he both loved and enjoyed using the iPad. Ibid.

Combined requires that the insured must sign the application, with the exception that a spouse may sign for one another, the producer must be present and witness each signature, and a face-to-face meeting is required for any policy to be written. Ibid. Combined did not waive the signature requirement for the Respondent. Ibid.

Upon starting with employment with Combined, the Respondent was provided with a lead sheet from Combined for an existing customer, Joseph M. Hunsicker ("Joseph")[2]. Id. at 4. The

[1] Combined Insurance also goes by the name Chubb Insurance. T2 97:14-16.

[2] The OTSC refers to Joseph as "JH" and the Initial Decision uses his full name. To maintain consistency with the Initial Decision, Joseph's name will be used herein. Further, this Final

lead sheet provided to the Respondent listed Joseph's address in Trenton, New Jersey and noted that he was retired. Id. at 39. On September 23, 2015, the Respondent met with Joseph at his residence in Ewing, New Jersey 08618. Id. at 4. On September 23, 2015, the Respondent submitted two insurance applications, one for life insurance and one for accident and health insurance, to Combined for Joseph. Ibid.[3] On September 28, 2015, the Respondent submitted a life insurance application to Combined for Joseph. Ibid.

Joseph referred Kumar to members of his family, including Ronald, Seibert, Robert and Robin. Id. at 39.[4] The Respondent never had Joseph "push the button" to submit an application for anyone else, other than for the section indicating that he is the payor on the policy. Ibid.

Joseph was listed as the payor on the policies submitted by the Respondent for Ronald, Seibert, Robin and Robert, as described below. Id. at 5.

The Respondent was aware that Joseph had a monthly income of $4,000 to $5,000 coming from his pension and social security disability benefits, and was aware that Joseph's bank account was overdrawn. Id. at 39.

On January 4, 2016, Combined terminated the employment contract with the Respondent. Id. at 5. On March 4, 2016, the Respondent submitted a letter to the Department in response to an inquiry from the Department. Ibid.

Decision and Order will refer to Joseph by his first, rather than last, name because other members of his family who are written about in this Final Decision and Order share the last name Hunsicker, making it confusing to refer to Joseph, and other members of his family, by their shared last name.

[3] At the hearing and thereafter, the Department has not pursued the violations alleged in the OTSC regarding the policies for Joseph.

[4] At the hearing and thereafter, the Department has not pursued the violations alleged in the OTSC regarding the policies of the following other members of the Hunsicker family: William Hunsicker, Margaret Hunsicker, and James Hunsicker.

Two Applications for Robert Hunsicker

On November 2, 2015, the Respondent submitted two applications to Combined for Robert Hunsicker ("Robert"). Id. at 11. The ALJ found that while Robert provided his name, address, and date of birth to Kumar and Joseph over the phone, he never applied for a policy, never met Kumar, and never signed the two applications submitted by Kumar under his name. Id. at 42.

Two Applications for Ronald Hunsicker

Ronald Hunsicker ("Ronald"), and his wife Kathleen Seibert ("Seibert")[5] were residents of Delaware in 2015 and did not have a second residence. Initial Decision at 39. Joseph contacted Ronald to obtain an insurance policy in 2015, but Ronald declined because he had coverage from his employer, Bank of America. Ibid.

Ronald never met the Respondent, never applied for insurance with Combined, and never signed the applications in the Respondent's presence. Ibid. On November 7, 2015, the Respondent submitted an insurance application to Combined for Ronald P. Hunsicker. Id. at 5. On November 7, 2015, the day the Respondent submitted an application to Combined under Ronald's name, Ronald and Seibert were on their way to a vacation in Mexico. Id. at 39.

On December 9, 2015, the Respondent submitted a second insurance application to Combined for Ronald. Ibid. The December 9, 2015 application contained Ronald's incorrect height and weight. Id. at 40. Both applications submitted by the Respondent for Ronald erroneously listed Ronald's address as being in Trenton, New Jersey, which is Joseph's address, even though both he and Seibert resided in Delaware. Id. at 39-40.

[5] As discussed in detail below, while the applications list the name of Ronald's wife as "Cathy Hunsicker", her legal name is Kathleen Seibert. The Initial Decision refers to her as "Cathy" when recounting the testimony of Dana Camadine of Combined and when recounting the testimony of her husband, Ronald. The Initial Decision refers to her as "Seibert" when recounting her own testimony. She will be referred to as Seibert throughout this Final Decision and Order.

Application for Seibert

Ronald and Seibert were residents of Delaware in 2015 and did not have a second residence. Id. at 39.

On December 9, 2015, the Respondent submitted an insurance application to Combined for Seibert, which erroneously listed her name as "Cathy Hunsicker" when her legal name is Kathleen Seibert. Id. at 40. Seibert's application erroneously listed her address as Trenton, New Jersey, which is Joseph's address, even though both she and Ronald resided in Delaware. (citing Ex. J-22). Ibid. The application incorrectly listed Seibert's height, weight, and the existence of prior life insurance. Ibid.

Seibert never met the Respondent, never applied for insurance with Combined, and never signed any applications for insurance in the presence of Kumar. Ibid.

On her written request to cancel the policy, Seibert signed her name exactly the way it incorrectly appeared on the application since she was told that the cancellation request had to exactly match the name reflected on the application. Ibid.

Three Applications for Robin

On November 7, 2015, the Respondent submitted an insurance application to Combined for Robin L. Hunsicker ("Robin"). Id. at 5. This application contained her incorrect birthdate. Id. at 41.

The Respondent also submitted two applications on December 16, 2015 to Combined for Robin. Id. at 40. The errors in Robin's first December 16, 2015, application included her incorrect middle initial, birthdate, height, and weight, and that she did not have insurance. Id. at 41. The errors in Robin's second December 16, 2015, application included her incorrect middle initial, birthdate, occupation, employer, height, weight, income, and physician. Ibid.

Robin never met the Respondent, never applied for insurance with Combined, and never signed any applications for insurance in the Respondent's presence. Id. at 40. Upon her discovery that the Respondent submitted an insurance application on her behalf, Robin submitted a signed letter to Combined requesting Combined to cancel the policy. Id. at 41.

Credibility

The ALJ noted that the witnesses gave conflicting testimony regarding the crux of the issue in this matter: whether the Respondent submitted fraudulent insurance applications to Combined for members of the Hunsicker family. Id. at 31. The ALJ stated that it is the duty of the fact finder to weigh each witness's credibility and make a factual finding. Ibid.

The ALJ found Dana Camadine ("Camadine") (the manager of Combined's compliance department), Catalano (the Marketing Director of New Jersey for Combined and the Respondent's supervisor at Combined), and Department Investigator Eugene Shannon ("Shannon") to be credible witnesses who provided believable testimony that was professional, clear, direct, and consistent with the record. Ibid.

The ALJ stated that Camadine outlined the Combined internal investigative process, and how she came to investigate Kumar regarding the Hunsicker applications. Ibid. She further detailed her complete investigation and stated that she prepared her report utilizing the same methodology and format as with any other investigation. Ibid. While Robert did not testify in this matter, Camadine testified that she spoke directly with him and Robert

> indicated that he also that he did not meet with Mr. Kumar, he did not apply for the policy. He did indicate that Mr. Kumar called him along with his Uncle Joseph and asked if he wanted it. He said he didn't but he -- he did acknowledge that he gave Mr. Kumar his name, address, date of birth. That information but again that he did not meet with Mr. Kumar, did not apply for it, did not sign the application. Id. at 31-32 (quoting T1 149:11-19).

The ALJ found that Camadine's credible testimony is consistent with the memorialization of her interview with Robert in her investigative report. Id. at 32. Robert additionally provided the same account in his interview with Shannon which was memorialized in a report Shannon prepared during his investigation. Ibid.

The ALJ stated that Catalano provided particularly relevant testimony relating to Kumar's training on the iPad at the initial sales training in Chicago, which is consistent with the training materials in the record. Ibid. Further, Catalano testified that the Respondent enjoyed, and never complained about, using the iPad. Ibid.

The ALJ stated that Shannon, an experienced investigator and former FBI Special Agent, detailed his comprehensive investigation, which included two recorded and transcribed interviews with the Respondent and interviews with Robert, Robin, and Ronald. Ibid. He additionally reviewed the Respondent's appointment book, a list of names of Hunsicker family and policy numbers, and phone records, all of which the Respondent provided. Ibid.

The ALJ additionally found the testimony of Robert Story ("Story"), the Director of Sales at Life Alert, and Respondent's current supervisor, to be credible, but noted that he had no interactions with the Respondent prior to June 2016. Ibid.

The ALJ did not find the testimony of Ronald, Seibert, Robin, and Kumar to be inherently unreliable. Ibid. However, the ALJ noted that the testimony of the Hunsicker family as to whether they applied for insurance policies or not, was inconsistent with the Respondent's testimony and that this inconsistency had to be resolved. Id. at 32-33. Further, the Respondent's testimony and Catalano's testimony regarding the iPad had to be reconciled. Id. at 33.

The ALJ found Ronald, Seibert, and Robin (the "Hunsickers" or "Hunsicker Family") credible. Ibid. The ALJ described their testimony as "consistent, clear, and direct." Ibid. The

ALJ did not note anything in their "tone, expression, or demeanor" that would lead him to believe they were being untruthful. Ibid. The ALJ also noted that these witnesses did not have an interest in the outcome, as their policies had already been cancelled. Ibid.

The ALJ noted that Ronald testified that he could not have met the Respondent and signed the November 7, 2015, application because he was on vacation with Seibert. Ibid. This testimony is supported by timestamped photographs from an iPhone taken in his hotel room in Mexico at 2:00 p.m. on November 7, 2015, the day they arrived and checked into the resort. Ibid.

The ALJ also noted the numerous errors contained in the applications submitted by the Respondent, such as Ronald and Seibert's incorrect address. Ibid. Seibert's application also misspelled her first name, and incorrectly listed her last name as Hunsicker. Ibid. Seibert's application incorrectly noted that she did not have insurance, and that the reason for the lack of a driver's license was also incorrect as she did not change her address in 2015. Ibid. Ronald's December 9, 2015 application contained his incorrect occupation and weight, and that he was not "fixing a driver's license issue in 2015" as his license was suspended from 1990 through 2016. Id. at 34. Finally, Robin noted numerous errors on her applications including her middle initial, birthdate, occupation, employer, height, weight, income, her physician, and that she did not have insurance. Ibid.

The ALJ noted that the Respondent's testimony on these issues conflicted with that of Ronald, Seibert, and Robin. Ibid. He claimed that he met with all three, they provided him with the information on the applications, and they signed the applications. Ibid.

The ALJ described the Respondent as "evasive, inconsistent, rambling, and argumentative." Ibid. The ALJ also indicated that the Respondent often failed to answer the question that was asked and instead "engaged in extended" unrelated "orations" or debated with

the Deputy Attorney General. Ibid. The ALJ also noted that the Respondent gave "countless examples of inconsistent and contradictory testimony" and made several "astonishing admissions" that undermined his testimony. Ibid.

The ALJ also noted a "pattern" in the Respondent's testimony where during the proceeding he remembered events he was previously unable to recall. Id. at 35. For example, he testified that he met with Seibert when she signed the application on December 9, 2015, but then admitted that his interrogatory responses stated that he could not recall if he witnessed her signing the application. Ibid. He also testified that he could remember meeting Robin in her home and her signing the application, but in his interrogatory responses he could not recall meeting her or witnessing her signature on the application. Ibid.

The ALJ stated that the Respondent "asks this tribunal to believe that while he could not recall these events closer to when they occurred, his memory has now been sufficiently refreshed by observing the hearing and the witnesses' testimony, and specifically seeing Robin and her home." Id. at 36. The ALJ noted the Respondent's "refreshed memory supports his version of the events at issue in this matter" and "leads to the inescapable conclusion that [the Respondent's] testimony has been tailored to match his claims." Ibid.

The ALJ stated that the Respondent's testimony is further undermined by his admission that his appointment book does not list a meeting with Robin on December 16, 2015, while there are other appointments on that date. Id. at 35. Further, the list of names of the Hunsicker family and policy numbers the Respondent provided to the Department contains no reference to Robin's December 16, 2015 applications. Ibid.

The ALJ also stated that the Respondent testified that he simply misspelled Seibert's first name, but he could not offer an explanation as to why he got her last name on her application wrong. Id. at 36.

The ALJ noted that the Respondent consistently blamed his countless mistakes on the applications on his iPad. Ibid. The Respondent confirmed that he received an iPad from Combined, but claimed that he did not get as much training as he should have. Ibid. While the Respondent denied that the sales school education checklist demonstrated that he received "training" on the iPad, he conceded that the checklist contained a list of the iPad training he received. Ibid.

The ALJ described the Respondent's testimony regarding the training he received on how to use the iPad "evasive, contradictory, and unclear." Ibid. The ALJ stated that when viewed in contrast to the documentary evidence and Catalano's testimony, the Respondent's testimony "can only be viewed as an attempt to creat[e] excuses for the extensive litany of errors contained in the applications at issue." Ibid.

The ALJ stated that the "most egregious" example undermining the Respondent's credibility is his testimony regarding Ronald and Seibert's address. Id. at 37. Both Ronald and Seibert testified that they lived in Delaware, not at Joseph's address in New Jersey. Ibid. At one point during his testimony, the Respondent admitted that he used Joseph's New Jersey address for Seibert's application, even though she lived in Delaware, "[b]ecause again I met her in New Jersey on jurisdictions only in New Jersey. If there's another place of residence that I'm allowed to put under her permission with the payer [sic] it is acceptable. I put her Delaware phone number on there." Ibid. (quoting T3 143:18-22).

The ALJ noted that at the conclusion of cross-examination, this "remarkable" exchange occurred:

> Q: So, you went from that was the address given to them, they had given to you to saying that Ronald --that you knew Ronald lived in Delaware from your conversations with Joseph and then to four months later stating that you never -- that Ronald and Kathy never told you that they lived in Delaware and then to saying that that was probably Joe -- probably being Joseph's address was probably another address that Ronald and Kathy had.
>
> And then in your interrogatory responses you have yet another reason claiming that yes, informed you that they had two residences. Isn't this five different versions of answering the same question?
>
> A: It seems that it is but I have an explanation for that but, yes, that -- it does seem like five different versions. Ibid. (quoting T4 13:2 to 14:16).

The ALJ stated that when "a witness admits to providing five different versions of answers to the same question, the entirety of that witness's testimony is undermined." Ibid. The ALJ stated that for the Respondent's testimony to be found credible, "it would necessitate disregarding his confusing and contradictory testimony, questionable demeanor, and remarkable admissions, along with his interest in the outcome of these proceedings" and would "require disregarding the credible testimony from Ronald, Seibert, and Robin regarding the applications, and from Catalano regarding Kumar's training on the iPad." Ibid.

The ALJ concluded that the Respondent's "inconsistent, evasive and confusing testimony, along with the remarkable refreshment of his recollections that support his version of the events at issue from September to December of 2015 cannot be believed." Ibid. Accordingly, the ALJ found that the Respondent's entire testimony was not credible or believable.

THE ALJ'S LEGAL ANALYSIS AND CONCLUSIONS

Violations alleged in the OTSC

The ALJ summarized the Producer Act, the Fraud Act, and the violations alleged in the OTSC. Id. at 42-43. The ALJ stated that the Department has the burden of proving the allegations by a preponderance of the credible evidence. Id. at 43 (citing Atkinson v. Parsekian, 37 N.J. 143 (1962) and In re Polk, 90 N.J. 550 (1982)). The ALJ noted that the evidence must be such as would lead a reasonably cautious mind to a given conclusion. Ibid. (citing Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958)). The ALJ further stated that "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." Ibid. (citing State v. Lewis, 67 N.J. 47, 49 (1975)).

The ALJ analyzed the counts as follows:

Count One: Producer Act Violations

The ALJ stated that the Department argued that it proved the violations set forth in Count One of the OTSC, that is, that the Respondent submitted applications for Ronald, Seibert, Robin, and Robert where he did not witness the prospective insureds' signatures, did not have a face-to-face meeting with the insured, and forged the prospective insureds' signatures in violation of N.J.S.A. 17:22A-40(a)(2), (5), (7), (8), (10), and (16) and N.J.A.C. 11:17A-4.2. Initial Decision at 44.

The ALJ found that the Respondent did not meet with Ronald, Seibert, Robin, and Robert, but the Respondent submitted applications for insurance under these applicants' names without their knowledge or consent. Ibid. The ALJ further found that Ronald, Seibert, Robin, and Robert

did not sign the applications, the Respondent did not witness their signatures, and Combined did not waive the requirements of N.J.A.C. 11:17A-4.2. Ibid.

The ALJ further found that the applications that the Respondent submitted contained a myriad of false material information, including: stating Ronald and Seibert's incorrect address; erroneously listing Seibert's name as "Cathy Hunsicker" when her legal name is Kathleen Seibert; Seibert's incorrect birthdate, height and weight and the existence of prior life insurance; Ronald's incorrect height and weight; and Robin's incorrect middle initial, birthdate, height, and weight, occupation, employer, physician, and that she did not have other insurance. Id. at 44-45.

The ALJ stated that the Respondent blamed these mistakes on the iPad, and his generally sloppy paperwork. Id. at 45. The ALJ found that the Respondent's explanations for these errors, some of which were basic information, were unsatisfactory and that the actual reason for these errors was that the Respondent never met with the applicants, and they never applied for insurance with Combined. Ibid. The ALJ stated that other than Robert giving the Respondent some basic information over the phone, it is evident that the remainder of the information was not provided by members of the Hunsicker family. Ibid.

The ALJ found that although Ronald, Seibert, Robert, and Robin did not sign the applications, the Department failed to meet its burden that the Respondent forged their signatures. Ibid. However, the ALJ found that by submitting applications for insurance under the applicant's name, without their knowledge, renders the entire application fraudulent. The ALJ found that the Respondent submitted eight such applications. Ibid.

The ALJ found that the Respondent's argument, that these policies were beneficial to the Hunsickers, but they claimed fraud only once the bills became due, is "wholly without merit and unsupported by the record." Ibid.

The ALJ concluded that the Department met its burden and demonstrated that the Respondent submitted eight fraudulent applications for insurance. Ibid. The ALJ concluded that the Department proved that the Respondent violated N.J.S.A. 17:22A-40(a)(2), (5), (7), (8), and (16) and N.J.A.C. 11:17A-4.2. Id. at 45-46. The ALJ further concluded that the Department did not prove that the Respondent violated N.J.S.A. 17:22A-40(a)(10). Id. at 46.

Count Two: Fraud Act Violations

The ALJ stated that the Department argued that it proved the violations in Count Two of the OTSC because the Respondent submitted applications for Ronald, Seibert, Robin and Robert, knowing that each of these applications contained a forged signature of the prospective insured, and other false or misleading information concerning any fact or thing material to the application or contract in violation of N.J.S.A. 17:33A-4(a)(3) and 4(a)(4)(b). Ibid.

The ALJ held that the Respondent did not meet with Ronald, Seibert, Robin, or Robert, but nevertheless submitted applications under their names for insurance policies with Combined without their knowledge or consent. Ibid. They did not sign the applications, the Respondent did not witness their signatures, and Combined did not provide the Respondent with a written waiver of the requirements set forth in N.J.A.C. 11:17A-4.2. Ibid.

The ALJ stated that even though the Department could not prove that the Respondent forged the applicants' signatures, the "voluminous record in this matter leaves no doubt" that the Respondent was aware that he submitted applications with forged signatures and materially false information to Combined in order to obtain these policies. Ibid. The ALJ stated that the applicants were not involved in the applications, did not apply for insurance, and the applications that the Respondent submitted to Combined under their names were fraudulent. Ibid. The ALJ concluded that the Department proved the violations of the Fraud Act. Ibid.

Robert's Applications and the Residuum Rule

The ALJ acknowledged that Robert did not testify during the hearing regarding the application submitted on his behalf. Id. at 41. Camadine testified that she spoke to Robert who informed her that while he gave the Respondent his name, address, and date of birth over the phone, he did not meet with him, and did not apply for the policies. Ibid. In contrast, the Respondent claimed that he met Robert twice at his home and that Robert signed the applications on the iPad. Ibid.

The ALJ summarized the residuum rule at N.J.A.C 1:1-15.5(a) and (b), which permits hearsay evidence to corroborate or strengthen competent proof, so long as the final administrative decision is not based solely on hearsay evidence and contains "a residuum of legal and competent evidence in the record to support [the decision]." Ibid. (quoting Weston v. State, 60 N.J. 36, 51 (1972)). The ALJ stated that the residuum rule does not require the factfinder to obtain non-hearsay evidence for each finding of fact when the ultimate finding of fact concerns a course of conduct that is unbecoming of a regulated profession. Ibid. (citing Matter of Tenure Hearing Cowan, 224 N.J. Super. 737, 750-51 (App. Div. 1988)).

The ALJ stated that the Department is seeking to revoke the Respondent's license because of "conduct unbecoming of an insurance producer." Id. at 42. The ALJ noted that Camadine's testimony is supported by the memorialization of her interview with Robert in her investigative report, and that Robert told Shannon the same account, which Shannon memorialized in his investigative report. Ibid. Accordingly, the ALJ found that while Robert gave the Respondent information over the phone, he did not apply for a policy, never met with the Respondent, and did not sign the two application that the Respondent submitted under his name. Ibid.

Penalties Recommended by the ALJ

The ALJ noted that the Department sought revocation of the Respondent's insurance producer license, along with the imposition of civil penalties. Id. at 47. The ALJ stated that pursuant to the Producer Act, the Respondent's license may be revoked. Id. at 47-48. The ALJ reiterated that the Department proved that the Respondent violated the Producer Act as alleged in Count One of the OTSC. Id. at 48-49. The ALJ held that the Department demonstrated that license revocation is warranted. Id. at 49.

The ALJ noted that under the Producer Act, the Commissioner may impose a penalty of not more than $5,000 for the first violation, a penalty of not more than $10,000 for any subsequent violation, and reimbursement for the costs of investigation. Id. at 49 (citing N.J.S.A. 17:22A-40(c)).

The ALJ additionally noted that under the Fraud Act, the Commissioner may impose a penalty not exceeding $5,000 for the first violation, $10,000 for the second violation, and $15,000 for each subsequent violation. Ibid. (citing N.J.S.A. 17:33A-5(c)). The Commissioner may also order the reimbursement of the costs of investigation and prosecution. Ibid. (citing N.J.S.A. 17:33A-5(c)). The ALJ stated that any person found to have committed insurance fraud shall be subject to a surcharge in the amount of $1,000. Ibid. (citing N.J.S.A. 17:33A-5.1). The ALJ stated that pursuant to both the Fraud and Producer Acts, the Commissioner may impose larger subsequent fines when multiple offense have been found in a single action. Ibid. (citing State v. Nasir, 355 N.J. Super. 96, 107 (App. Div. 2002) (additional citations omitted)).

The ALJ noted that the Department requested the imposition of civil penalties in the following amounts:

1. Two separate civil penalties of $1,250 to be assessed against the Respondent for each fraudulent application submitted for Ronald one under the Producer Act and

one under the Fraud Act, for a total of $2,500 per application and a total of $5,000. (citing Ex. J-17, Ex. P-1).

2. Two separate civil penalties of $1,250 to be assessed against the Respondent for the fraudulent application submitted for Seibert one under the Producer Act and one under the Fraud Act, for a total of $2,500. (citing Ex. J-22).

3. Two separate civil penalties of $1,250 to be assessed against the Respondent for each of the three fraudulent applications submitted for Robin one under the Producer Act and one under the Fraud Act, for a total of $2,500 per application and a total of $7,500. (citing Ex. J-18, Ex. P-2, Ex. P-3).

4. Two separate civil penalties of $1,250 to be assessed against the Respondent for each fraudulent application submitted for Robert one under the Producer Act and one under the Fraud Act, for a total of $2,500 per application and a total of $5,000. (citing Ex. J-13, Ex. J-14).

5. A Fraud Act surcharge of $1000.

Id. at 49-50.

The ALJ noted that the Department was seeking $10,000 for the eight Producer Act violations, $10,000 for the eight Fraud Act violations, the $1,000 Fraud Act surcharge, together with reimbursement for Department's costs of investigation and prosecution of $9,774.25, and attorneys' fees of $35,000, for a total of $65,774.25. Id. at 50.

The ALJ analyzed the seven factors for determining monetary penalties set forth in Kimmelman v. Henkles & McCoy, Inc., 108 N.J. 123, 137-39 (1987). Id. at 50-52. These factors include: (1) the good faith or bad faith of the Respondent; (2) the Respondent's ability to pay; (3) the amount of profits obtained from the illegal activity; (4) injury to the public; (5) duration of the illegal activity or conspiracy; (6) existence of criminal actions; and (7) past violations. Id. at 50.

As to the first factor in Kimmelman, the good or bad faith of the Respondent, the ALJ stated that "the record has conclusively established [the Respondent's] bad faith." Id. at 51. He submitted eight applications for Ronald, Seibert, Robin, and Robert without their knowledge or consent. Ibid. The Respondent never met with them, they never signed the applications, the

Respondent did not witness their signatures, and Combined did not provide a written waiver for the requirements set forth in N.J.A.C. 11:17A-4.2. Ibid. The Respondent submitted these fraudulent applications, which contained forged signatures, to Combined to obtain insurance policies. Ibid.

As to the second factor in Kimmelman, the ability to pay, the ALJ stated that the Department requested a moderate penalty based upon tax records provided by the Respondent which reported a "total income of $33,879, $25,873, $71,844 and $76,336 for the years 2015, 2016, 2017, and 2018, respectively." Ibid. (citing Department Brief at 43). The Respondent argued that he has "no ability to pay the excessive requests for fines and penalties" as he has "virtually no savings to his name" and his "income is now only approximately $60,000 per year." Ibid. (citing Respondent Reply Brief at 29, Ex. Q). The ALJ concluded that while the Respondent provided "a snapshot of his debt and expenses, he is employed with Life Alert and earns approximately $60,000 per year." Ibid. Accordingly, the ALJ found that the Respondent has offered no evidence in relation to his ability or inability to pay a civil penalty and therefore a moderate penalty is appropriate. Ibid.

As to the third factor, the profits obtained, the ALJ stated that the parties agreed that the Respondent did not profit from the violations. Ibid.

As to the fourth factor, injury to the public, the ALJ stated that "the record has conclusively established that the Respondent submitted fraudulent applications, including forged signatures" for four applicants. Ibid. Further, the applications were submitted without the applicants' knowledge or consent. Ibid. The ALJ noted that an insurance producer is a position of fiduciary trust, and the Respondent's "willful, fraudulent actions are a violation of that trust." Ibid.

Regarding the fifth factor in Kimmelman, the duration of illegal activity, the ALJ found that the Respondent engaged in the prohibited activity between September 2015 and December 2015. Id. at 51. The ALJ found that this short duration supports a lower penalty. Ibid.

Regarding the sixth factor, the existence of criminal charges related to the matter, the ALJ found that the Respondent has not been criminally charged for his actions in this matter and a greater penalty was warranted. Ibid.

For the final factor in Kimmelman, previous relevant regulatory and statutory violations, the ALJ found that the Respondent has not previously violated the Producer or Fraud Act. Accordingly, a lower penalty was warranted. Ibid.

Based upon the above analysis, the ALJ recommended that a civil monetary penalty in the total amount of $10,000 for the eight Producer Act violations; $10,000 for the eight Fraud Act violations; and a $1,000 fraud surcharge be imposed. Ibid. The ALJ additionally found that reimbursement of the costs of investigation and prosecution in the amount of $9,774.25 and attorneys' fees in the amount of $35,000 was appropriate. Ibid.

EXCEPTIONS

Under N.J.A.C. 1:1-18.4(a), Parties' Exceptions were due on or before December 13, 2021. On November 30, 2021, the Respondent requested a 45-day extension under N.J.A.C. 1:1-18.8(d). The request was granted on December 1, 2021 and the parties' exceptions were due by January 27, 2022. The Department submitted its exceptions on January 27, 2022. ("Department Exceptions"). The Respondent's attorney also submitted his exceptions on January 27, 2022 ("Respondent Exceptions"). Also, on January 27, 2002, the Department requested an extension under N.J.A.C. 1:1-18.8(d) to file its Reply, which the Respondent did not consent to. Nevertheless, an extension was granted, and the parties were given until February 14, 2022 to file

replies. The Department filed its reply on February 14, 2022. ("Department Reply"). The Respondent also filed his reply on February 14, 2022. ("Respondent Reply").

Department Exceptions

The Department states that the ALJ made "many correct findings of fact, but reached one critical erroneous conclusion" in finding that the Department did not meet its burden and prove that Kumar forged the signatures on the insurance applications. Department Exceptions at 2.

The Department notes that the ALJ found that the Respondent never met with Ronald, Seibert, Robin, or Robert, that they never applied for insurance with Combined, and that the Respondent never witnessed their signatures. Ibid. Joseph was the only other person present when these applications were submitted, and Joseph never submitted applications on his family members' behalf. Id. at 2-3. The Department proposed that the Commissioner adopt the ALJ's finding of fact and conclusions of law, but also find that the Respondent forged the signatures on the applications submitted to Combined in violation of N.J.S.A. 17:22A-40(a)(10) and N.J.S.A. 17:33A-4(a)(4)(b).[6] Id. at 3. The Department agreed with the revocation of the Respondent's insurance producer license and monetary penalties. Ibid.

[6] The ALJ found that the Respondent violated N.J.S.A. 17:33A-4(a)(4)(b). Initial Decision at 46. The ALJ stated that even though the Department did not prove that the Respondent actually forged the signatures in violation of N.J.S.A. 17:22A-40(a)(10), that did not prohibit a finding that the Respondent violated N.J.S.A. 17:33A-4(a)(4)(b). Ibid. The ALJ wrote, "[n]otwithstanding that the Department has not proved that Kumar himself forged the applicant's signatures, the voluminous record in this matter leaves no doubt that Kumar knew that he submitted applications with forged signatures and materially false information to Combined in order to obtain insurance policies. Put simply, as the purported applicants had no involvement with the applications, and did not apply for insurance, the applications Kumar submitted to Combined under the names of Ronald, Seibert, Robin, and Robert were fraudulent." Ibid.

Testimony, Factual Findings, and Exhibits

The Department agreed with the ALJ's statements concerning the testimony presented at the final hearing. Id. at 4. The Department agreed with the ALJ's findings that neither Ronald, Seibert, Robin, nor Robert met with the Respondent, applied for insurance with Combined, or signed any applications in the Respondent's presence. Ibid. (citing Initial Decision at 39-42). Combined required its agents to submit applications on an iPad which Combined issued and tracked using a unique iPad number associated with each iPad. Ibid. (citing T1 31:2-9, 112:16-24). The Respondent was trained extensively on the iPad at Combined's headquarters in Chicago and after completion received a certificate from Combined. Ibid. (citing Initial Decision at 38. Ex. R-6, Ex. R-7).

The Department requested that the Commissioner correct errors regarding the labels of Exhibits P-4 and P-7. Ibid. (citing Initial Decision at 55-56). In the Initial Decision, these exhibits are labeled as "Certified Transcripts of Petitioner's Oral Statement." Ibid. These exhibits are certified transcripts of the Respondent's oral statements to Investigator Shannon on February 23, 2016 and June 10, 2016. Id. at 4-5.

Proposed Findings of Fact

The Department concurred with the ALJ's findings of fact and requested that the Commissioner make an additional finding that that the Respondent forged signatures on the insurance applications of Ronald, Seibert, Robin, and Robert. Id. at 5.

Discussion and Analysis

The Department objected to the ALJ's conclusion that "the Department failed to meet its burden to prove that [the Respondent] himself forged the signatures" on the applications in

violation of N.J.S.A. 17:22A-40(a)(10). Ibid. The Department argues that this conclusion is at odds with the evidence and the Respondent's admissions at the hearing. Ibid.

The Department states that the ALJ correctly concluded that neither Ronald, Seibert, Robin, nor Robert met with the Respondent, applied for insurance with Combined, or signed any applications in the Respondent's presence. Id. at 5-6 (citing Initial Decision at 39-42). The Department points out that the ALJ rejected the Respondent's explanation of sloppy work or errors attributable to the iPad and instead concluded that the errors in the applications were due to the Respondent having never met with the applicants. Id. at 6.

The Department also recounted the ALJ's credibility findings, which found that the Department's witnesses were generally credible, but the Respondent was not. Ibid.

Proposed Legal Conclusion

The Department argues that it established by a preponderance of the evidence that the Respondent violated the Producer and Fraud Act by forging applicants' signatures in violation of N.J.S.A. 17:22A-40(a)(10) and N.J.S.A. 17:33A-4(a)(4)(b). Id. at 7.

The Department argues that the Respondent was the only person who had possession of the iPad that Combined issued to him and the applications were submitted using that iPad. Ibid. Accordingly, "there is no doubt that [the Respondent] forged the signatures on the insurance applications submitted to Combined." Ibid.

The Department also argues that Camadine's investigative report also supports the conclusion that the Respondent forged the applicants' signatures. Ibid. Camadine's investigation report contains an interview with Joseph, where he states that he only signed his own application, and not those of his family members. Ibid. (citing Ex. P-47). Aside from the Respondent, he was

the only other person present when the applications were submitted, as he was listed as the payor of the policies. Ibid.[7]

The Department concludes that the preponderance of the credible witness and documentary evidence supports the legal conclusion that the Respondent forged signatures on the insurance applications submitted on behalf of members of the Hunsicker family. Id. at 8-9. By forging these signatures, the Respondent violated N.J.S.A. 17:22A-40(a)(10) and N.J.S.A. 17:33A-4(a)(4)(b). Id. at 9.

Respondent Exceptions[8]

Initial Decision - Adjournment of the Case, Pages 2 and 3

The Respondent states that the Department requested to adjourn the hearing several times because its witnesses were not ready, and it did not want to have the hearing over Zoom. Respondent Exceptions at 2. Nevertheless, the hearing had to be held over Zoom. Ibid. The Respondent states that the "case was just adjourned and delayed way too much." Ibid.

Initial Decision – Page 5, Section 11

[7] The Respondent testified that Joseph was "always the payor" and that the Respondent had Joseph "hit the submit part for the part he's the payor for." T4 77:12-20.

[8] Along with the Exceptions prepared by the Respondent's attorney, additional exceptions prepared by the Respondent himself titled "Finding of Facts by Paul Kumar vs Judge Gerstman Initial Decision with his Findings of Facts" were submitted for consideration. ("Kumar Exceptions"). These two submissions track each other's points and often contain the same language. For example, both submissions state that Catalano suggested that the Respondent speak to Joseph and report back to Camadine "to save my job." Respondent Exceptions at 6, Kumar Exceptions at 5. Both submissions state that, "Catherine is the origin name of Greek spelling, if she took the alternative spelling, that is completely legal and right to do so if how her name was from birth." Respondent Exceptions at 20, Kumar Exceptions at 12. The exceptions submitted by Kumar were reviewed and considered. However, to avoid redundancy, this Final Order will only summarize those exceptions submitted by Respondent's attorney, which relied heavily on Kumar's factual recitations and allegations.

The Respondent takes exception to the ALJ's finding that the Respondent submitted two applications for Robert. Id. at 3 (citing Initial Decision at 5).[9] The Respondent argues that Robert did not testify and there was "excessive use of the residuum rule and…last minute…added exhibits from [Camadine] should not have been permitted as well."[10] Ibid. The Respondent further argues that when he was interviewed by Shannon, he was not informed why he was being investigated or that he had a right to counsel. Ibid.

Initial Decision - Page 5, Section 18

The Respondent takes exception to the ALJ's finding that the Respondent submitted an insurance application to Combined for Seibert. Ibid. (citing Initial Decision at 5).[11] The Respondent argues that the "debate of her legal name was not disposed for her as Kathy Seibert and this information was never given to the [R]espondent." Ibid.

Initial Decision - Page 6, meetings with Camadine

The Respondent argues that he and Camadine never met face-to-face and conversations with Camadine were not "mentioned to him as conduct interviews or complaints made by the Hunsickers." Ibid. (citing Initial Decision at 6). The Respondent states that Camadine had questions about insurance applications and argues that it "is important to emphasize" that Camadine never met the Respondent. Id. at 3-4.[12]

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[9] This was found as part of the ALJ's joint stipulation of fact. Initial Decision at 5. Further, Robert's applications were joint exhibits. Ex. J-13 and Ex. J-14.

[10] It is unclear which exhibits the Respondent is referring to. The Respondent did not object to any of the exhibits introduced during Camadine's testimony on the basis that he was surprised by the exhibits, or that he did not have adequate time to review them.

[11] This was found as part of the ALJ's joint stipulation of fact. Initial Decision at 5. Further, Seibert's application was a joint exhibit. Ex. J-22.

[12] To support this contention, the Respondent cites to T2 66:1 to 150:1. Not only is this a large portion of the transcript and generally unhelpful when trying to locate particular testimony, but

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The Respondent argues that the ALJ "generalizes that in the year of 2015 all of the insurance applications were only processed by an iPad." Id. at 4 (citing Initial Decision at 6). The Respondent argues that Catalano also trained the Respondent to prepare paper applications. Ibid. The Respondent argues that a video of the respondent being trained with paper applications was "submitted as proof" and "admitted into evidence also." Ibid.[13] The Respondent avers that he "did mention multiple times that to ensure accuracy maybe its best to prepare insurance paper applications." Ibid. However, Combined insisted that the Respondent use the iPad and advised him that it is "almost impossible to have compliance mistakes with supplemental policies." Id. at 4-5. The Respondent argues that "it seems that is part of the main issue being made toward the Respondent from the DOBI is that knowingly committed false applications to commit fraud." Id. at 5. The Respondent argues that this is "very insulting" and is unsupported by the record. Ibid.

Initial Decision - Page 9

The Respondent states that the employee handbook is "much more elaborated and detailed than the document that the Respondent received when starting employment." Ibid. (citing Ex. P-8).[14] The Respondent also posits that Camadine "claims that she did not refer the Respondent to

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Camadine did not testify on the second day of hearings. The correct transcript citation for Camadine's testimony that she did not meet with the Respondent in person is T1 127:1-6.

[13] The Respondent does not indicate which exhibit shows the Respondent being trained on how to use paper applications. However, it is Exhibit R-12, a video which the Respondent took himself and depicts Catalano showing him how to use paper applications in Catalano's office. T3 188:9-14.

[14] The Respondent did not enter the employee manual that he alleges he received into evidence. The Respondent did not object when the employee manual that was entered into evidence. T1 109:15 to 110:18. Camadine testified that she did not have a copy of the employee handbook with the Respondent's signature. T1 148:21-23.

DOBI, but the licensing department." Ibid.[15] (citing Initial Decision at 9). The Respondent argues that Camadine "tried to add an addendum report (P-47) to the State's OTSC."[16] Ibid. The Respondent also points out that although he was fired from Combined in 2016, the OTSC was issued in 2018 "way before the pandemic started." Ibid. The Respondent argues that he had trouble at Combined due to the iPad and Combined's administration. Id. at 5-6. The Respondent argues that he wrote other applications that contained errors, but those applications did not create compliance issues. Id. at 6.[17]

The Respondent argues that Camadine testified that putting wrong addresses on applications amounts to fraud. Ibid. The Respondent argues that this is not true and "[i]nsurance policies can be prepared in good faith even if erroneous bio info is." Ibid.

The Respondent also avers that Camadine instructed Catalano to have the Respondent interview Joseph about these matters, but it "is important to emphasize that she did not allow the Respondent to follow up on this point." Ibid.[18]

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[15] To support this contention, the Respondent cites to T2 66:1 to 150:1. The correct transcript citation for Camadine's testimony that she did not report the Respondent to the Department is T1 115:5-10.

[16] The Respondent does not indicate how Camadine, a private citizen, attempted to add her investigative report to an OTSC issued by the Department.

[17] To support this contention, the Respondent cites to T2 66:1 to 150:1. However, it seems as though he is referring to Ex. P-10, which was marked for identification, but never entered into evidence. Ex. P-10 is another compliance investigation report that Camadine wrote. T1 94:3-11. This report did not pertain to the Hunsickers, but to other individuals. T1 94:24 to 95:4. After the investigation detailed in Ex. P-10 concluded, the Respondent was not referred to the Department, but was given "the benefit of the doubt." T1 107:11-21.

[18] To support this contention, the Respondent cites to T2 66:1 to 150:1. Camadine never testified that she instructed anyone to have the Respondent interview Joseph. Camadine testified that after she made her report, the notice of termination would have been given by the Respondent's supervisor. She did not speak to the Respondent, or advise him after her report was concluded. T1 137:12 to 138:4. Catalano testified that the Respondent asked him "if it was okay to go to

The Respondent argues that Joseph "discussed with his family members is how this process should be recorded as." Ibid. The Respondent argues that the policies "were on the books" between one and three months, and would not have been issued "if customer service would have addressed any and all issues" to the Respondent. Ibid.

The Respondent argues that Robert did not testify at the hearing and testimony regarding his statements should be excluded under the residuum rule. Id. at 6-7. The Respondent argues that Joseph did not have Robert's information and the Respondent obtained the information on the application from an in-person meeting with Robert. Id. at 7. The Respondent argues that "every time when the Respondent has something accurate or correctly done from the Respondent's meetup with the customer. The petitioner then challenges him on how on when and where I got the information." Ibid.

The Respondent argues that it is convenient that the applicants "always in the end said 'they didn't want insurance'" but always gave the Respondent "pertinent information to submit the application." Ibid. The Respondent argues that if he did commit fraud, then Joseph was a co-conspirator who gave him information, but he was not called to testify at the hearing. Ibid.

The Respondent alleges that "buyers can be liars." Ibid. The Respondent argues that the applicants were motivated to lie "because a customer that provides false information on an insurance application. Although that may not be the case, it is apparent that the customers knew that the Respondent." (sic). Id. at 7-8. The Respondent argues that after he was fired from Combined and investigated by the State the applicants have "clear motive to keep things minimal on their part…" Id. at 8.

Hunsicker and clear it up and I said that it was okay. I said if you feel you did not do this then you should be calling Mr. Hunsicker to kind of clarify what took place." T2 108:24-109:4.

The Respondent argues that he made errors on the iPad and is not comfortable with Apple's technology, but did not commit insurance fraud. Ibid. He argues that he did not receive extensive training on the iPad, and only received training on performing presentations and submitting applications. Id. at 21. The Respondent argues that the items in the checklist were online tutorials "that had nothing to do with the training school." Ibid. (citing Ex. R-7; T3 200:20-202:15). He states that there was no opportunity to interact with these tutorials, or ask questions. Ibid. The Respondent could not learn and understand on his own how to comfortably operate the iPad. Id. at 21-22.

The Respondent argues that Ronald testified that he only had one residence. Id. at 8. He goes on to argue, "[w]hether this is verified to be true or not the Respondent met him with Ronald Hunsicker at his brother Joseph Hunsicker's home." Ibid.[19] The Respondent argues that he took initiative and met with Ronald and Seibert "to have their application produced at that residence." Id. at 8-9. The Respondent then "inferred that idea to Investigator Shannon." Id. at 9.

The Respondent argues that the Department "is taking the Respondent's variations of reasoning to this question as a way to be contradictive or evasive." Ibid. The Respondent argues that he has many clients who live in New Jersey, but have phone numbers from other states. Ibid. The Respondent argues that he went "blindly" and unprepared into an interview with Shannon and tried to cooperate by answering all his questions. Ibid. The Respondent states that the Department's "main theme is simple" that Ronald never met the Respondent and never signed insurance applications, but that is untrue. Ibid.

[19] To support this contention, the Respondent cites to T2 9:1-49:1, which is the entirety of Ronald's testimony and generally unhelpful when trying to locate particular testimony. Ronald never testified that he met the Respondent at Joseph's house. Ronald testified that he only has one residence. T2 10:14-17.

The Respondent argues that the Department has no proof of forgery and there is no "fraud without proof of forgery. Then that itself is considered an invalid application along with inconclusive findings of me creating fraud to an insurance company." Ibid. The Respondent also alleges that Joseph told him that "Ronald Hunsicker has visited Joseph Hunsicker's home many times, not just at Robin's home." Ibid. However, this is unable to be verified with Joseph. Ibid.[20]

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The Respondent again argues that Seibert never disclosed her legal name to him. Id. at 10. The Respondent points out that she signed the attestation page as "Cathy Hunsicker" which "proves that Joseph just signed the cancellation paper, or Ronald for that matter when instructed to cancel, as she did not recall 'who' told her to cancel." Ibid. The Respondent argues that a handwriting expert did not testify to establish fraud. Ibid.

The Respondent argues that he used a drop-down menu to specify applicants' occupations. Ibid. He argues that the drop-down menu did not contain every occupation and he did not commit fraud because he was unable to put in the correct occupation from the menu. Ibid.

The Respondent takes exception to the ALJ's finding that Ronald was not "fixing a driver's license issue in 2015" because Ronald's license was suspended. Id. at 11. The Respondent argues that Ronald did not want to provide his license and that "is why again with Investigator Shannon the Respondent had stated without preparation they he may have and then hesitated to fully answer." Ibid. The Respondent argues that Ronald never told him that his license was suspended,

[20] To support this contention, the Respondent cites to T2 9:1-49:1. It is unclear why the Petitioner cites Ronald's testimony for the proposition that Joseph, who did not testify, told the Respondent that Ronald visited his home often. Ronald testified that he saw his brother approximately twice a year. T2 11:3-8.

but it "matches clearly with why the Respondent put that omission rationale." Ibid. The Respondent describes Ronald as "cautious and conservative" and "looking out for Joseph." Ibid.

The Respondent argues that the attestation page "acknowledges cancellation appears that the signatures were signed by [Joseph]. It is very argumentative because [Joseph] was not available at the hearing to answer that question. This would show if he did say yes to that question then this is clearly coming from an idea of buyer's remorse." Ibid. The Respondent argues that Combined "technically issued the so called 'fraudulent application.'" Ibid. However, the Respondent argues, that "there was no record of a phone interview with them, but only when a complaint was made, everything was made toward the Respondent as the acting agent, territory manager, created fraud?" Ibid.

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The Respondent argues that Ronald acknowledges that his name, phone number, date of birth, and employer are all correct. Id. at 12. The Respondent states that when information on the application is correct, the Department argues that he must have received it from Joseph. Ibid. The Respondent argues that "no matter what the circumstance is on meeting any customer, the Respondent is always doing something underhanded and not in good faith." Ibid.[21] The Respondent argues that Ronald's testimony that Joseph was surprised by the insurance bill and it was more than he expected to pay is hearsay. Ibid. (citing T2 37:7-12). The Respondent argues that it "is uncontroverted that the other family members that had no quarrel knew it ranged to approximately $600 a month." Ibid.[22]

[21] To support this contention, the Respondent cites to T2 9:1-49:1. Ronald testified that his name, date of birth, employer, and phone number were correct on Exhibit P-1. T2 31:18-32:4.

[22] To support this contention, the Respondent cites to T2 9:1-49:1. Nowhere in his testimony does Ronald state that the family was aware that the policies would cost approximately $600 and they were unbothered. Ronald testified that if all the policies were approved, Joseph would have paid

The Respondent points out that Seibert signed her name as "Cathy" on the attestation letter. Ibid. He argues that it is not protocol for an insurance company to ask her to sign her name that way. Id. at 12-13.

The Respondent argues that Combined only sells supplemental policies which do not replace whole existing policies. Id. at 13. The Respondent argues that he put the correct information on the applications when he indicated that the applicants did not have other policies, because they did not have other supplemental policies. Ibid.

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The Respondent argues that he gathered information from Robin and Seibert, or the policies would not have been submitted. Id. at 14. The Respondent argues that Ronald "initiated the cost dispute." Ibid. The Respondent again argues that Joseph did not testify to confirm if he canceled the policies. Ibid.

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The Respondent also argues that the incorrect date from the fax machine on Robin's letter to Combined asking that the policy be cancelled shows that the investigation was done "so hastefully." Id. at 15. The Respondent also argues that on "the last paragraph of this page" Robin "listed her employer as St. Francis."[23] Ibid. The Respondent states that the insurance application therefore listed her employer correctly. Ibid.

approximately $2,000 a month. T2 12:21-13:5. He also testified that Joseph was upset the policies would cost approximately $600 a month. T2 44:22-45:6.

[23] Although the Respondent does not cite to the documentary evidence, Robin's letter to Combined is at Ex. P-29. It is one paragraph long, so it is unclear why the Respondent refers to "the last paragraph of this page…" Further, Robin does not state in this letter that her employer is St. Francis.

The Respondent argues that Robin testified that she didn't give any information to Joseph for an insurance policy and the Respondent submits that he obtained information for the policy directly from Robin. Ibid. The Respondent argues that he did meet with Robin, but that Robin "conveniently forgot" the meeting and her phone conversations with the Respondent. Ibid.[24] The Respondent argues that Robin Hunsicker has a daughter and "I mentioned about a little girl. There is no reason for Joseph Hunsicker to discuss any bio info about his niece's daughter." Id. at 20. The Respondent argues that he knew Robin had a daughter because he met Robin. Id. at 21.

The Respondent argues that Robin's testimony was "influenced to assist her Uncle Joe to cancel the policies, and to stop paying for premiums." Id. at 15. He argues that it is "all too convenient that not one of the family members all maintained that they did not meet" the Respondent. Id. at 15-16.

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The Respondent states that Shannon conducted over 250 investigations, but questions whether his investigation in this case was "certified or confirmed rather than just a report?" Id. at 16. The Respondent notes that this investigation was opened after a referral from Combined. Ibid. The Respondent argues that he "specifically asked Investigator Shannon during his so-called interview." Ibid. Shannon indicated that the investigation related to customer complaints, but this was untrue because no customers complained. Ibid.

[24] To support this contention, the Respondent cites to T2 62:1-97:1, which is the entirety of Robin's testimony and generally unhelpful when trying to locate particular testimony. Nevertheless, Robin never testified that she forgot meeting and having phone conversations with the Respondent. Robin testified that she did not give Joseph information for an insurance policy. T2 83:16-21; 84:3-6.

The Respondent argues that Shannon testified that "I can't say that Mr. Kumar forged the signatures, but someone else other than the applicant placed the signatures." Id. at 17 (quoting T3 13:3-8). The Respondent argues that "if something is not provable as fraud it becomes inconclusive, not influential or probable that fraud occurred. Unless Investigator Shannon or DOBI is suggesting conspiracy with Joseph Hunsicker." Ibid.

The Respondent argues that Shannon "also emphasizes that the administrative process is not the only key for a successful transaction between agent and insurance company, but rather the 'process' and the integrity between the transaction." Ibid. The Respondent states that Shannon "advised [the Respondent] that whether he was on a recorded session with speaking to him." Ibid. The Respondent states that Shannon "specifically told [the Respondent] that some insurance company's process may not be the best, and that is something he should take with the insurance." Ibid.

The Respondent argues that over two years after the interview with Shannon the Department issued the OTSC. The Respondent argues that the Department never considered that Combined's investigation process could be wrong "just like how these policies were in effect and enforced for 1-3 months. Policies like this cannot stay that long for compliance to be considering my applications as fraud." Id. at 18. The Respondent points out that Combined continued his employment, "even when general customer concerns were raised in this matter." Ibid. The Respondent again states that no customer spoke to him "specifically." Ibid.[25]

[25] To support this contention, the Respondent cites to T2 117:1-178:25 and 3T 16:1-61;1, which encompasses nearly the entirety of Shannon's testimony, is 106 pages, and is generally unhelpful when trying to locate particular testimony. Shannon did not testify that customers did not speak to the Respondent.

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The Respondent takes exception to "the appointment book for Robert Seibert."[26] Ibid. (citing Initial Decision at 18). The Respondent reiterated that he was hired to train and recruit agents, "not hired to be a one man business doing all the processes." Ibid. The Respondent states that he was attempting to demonstrate "that this was done from their poor processes." Ibid. The Respondent argues that Combined "was not the best of environments because of their tactful and hasteful sales practices, and fast usage of electronic devices that does not create constant accuracy or efficiency of its customers."[27]

The Respondent argues that Joseph referred his family members to the Respondent. Id. at 19. The Respondent states, "how can that mean that [the Respondent] mysteriously took insurance applications and obtained knowledgeable information about all of these family members is something that needs to be severely considered." Ibid.

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The Respondent argues that he received Robert's driver's license and entered the information on the iPad. Ibid. The Respondent argues, it "makes no sense to give an insurance agent who is not interested in procuring insurance policies." Ibid. The Respondent argues that this is similar to a "cold call" to a person's home where the prospective client would receive

[26] This appears to be an error, as there is no one named Robert Seibert involved in this case. The Respondent may be referring to the ALJ noting that the Respondent's appointment book did not contain an appointment with Robin on December 16, 2015. Initial Decision at 18 (citing Ex. P-5). Alternatively, he may be referring to the ALJ noting that in the Respondent's appointment book, Seibert is referred to as "Kathy." Ibid.

[27] To support this contention, the Respondent cites to T2 97:1-103:25. This is part of Catalano's testimony. Catalano did not testify that Combined used rushed sales tactics or that using electronics was not accurate or efficient.

information, but in "this case it was a meet up." Ibid. The Respondent argues that he "accurately given his info on the application." Ibid.[28]

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The Respondent emphasizes that he "heard from" Seibert that her name was Catherine, and that is how she signed "the so-called cancellation request…"[29] Id. at 20. The Respondent argues that "for the appointment to have Katherine[30] from a setting made by his assistant or colleague, and just writing the notes in, that is possible for the person to write it that way."[31] Ibid. The Respondent admits that "[i]t sounds extreme" but "there is no fraud from people that the Respondent met from Uncle Joe Hunsicker's referrals." Ibid. The Respondent argues that he did not put any false or misleading information on the insurance policies and that if the Department "truly considered that this was just pure sloppy and isolated conditions, it is very possible that all these policies for meticulously sent unorganized with the company." Ibid.

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The Respondent argues that his interview with Shannon is inaccurate because he was "paraphrasing or giving a hypothetical conclusion of what happened." Id. at 22 (citing Ex. P-4

[28] To support this contention, the Respondent cites to T3 61:1-224:1 and T4 5:1-80:1. This is 225 pages of transcript and all but the redirect examination of the Respondent. This is generally unhelpful when trying to locate particular testimony. The Respondent's testimony was considered.

[29] Seibert signed the attestation page as "Cathy" not Catherine. Ex. P-15.

[30] Seibert's first name is Kathleen. T2 47:15-16. The Respondent appears to be referring to his appointment book, which lists an appointment with Ronald and "Kathy" on December 5, 2015. Ex. P-5.

[31] To support this contention, the Respondent cites to T2 49:1-62:5. This is the entirety of Seibert's testimony, and is generally unhelpful when trying to locate particular testimony. Seibert did not testify that it is possible for someone who is writing notes to spell her name as Katherine.

32:1-25). The Respondent argues that if he realized he was being accused of fraud, "he would have presented a more fashionable realistic scenario to every question." Ibid.

The Respondent argues that Joseph followed through with him about overdraft fees, "because he knew it was his responsibility to balance his budget." Id. at 23. The Respondent argues that he did not cause Joseph's "budget to be over drafted, he overspent on other personal things beyond my business or scope of what he sold him." Ibid.[32] The Respondent argues that the Department "wants to infer that if I knew this, and customers already complaining about cost and meeting, how could [the Respondent] still go visit them and do the policies?" Ibid. The Respondent states it was because of lack of communication with the insurance company. Ibid.

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The Respondent argues that the Department tried to show that the Respondent contradicted his testimony. Ibid. (citing Initial Decision at 25). The Respondent states, "[c]omplete wrong wording, - JOSEPH DID NOT WANT ME TO CALL TO TESTIFY and he was paraphrasing to Shannon, informal dialogue. He never had the Respondent on a witness chair asking bulletin questions. [The Respondent] did not get to the correct call from Joseph Hunsicker!" Id. at 23-24.[33] (Emphasis in original).

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The Respondent admits that he gave different versions of why he listed Ronald and Seibert's address as Trenton. Id. at 24 (citing Initial Decision at 26, T4 13:2-14:16). The

[32] To support this contention, the Respondent cites to T3 61:1-224:1 and T4 5:1-80:1. This is 225 pages of transcript and all but the redirect examination of the Respondent. This is generally unhelpful when trying to locate particular testimony. The Respondent's testimony was considered.

[33] To support this contention, the Respondent cites to T3 61:1-224:1 and T4 5:1-80:1. This is 225 pages of transcript and all but the redirect examination of the Respondent. This is generally unhelpful when trying to locate particular testimony. The Respondent's testimony was considered.

Respondent argues that his answers evolved because he "gave himself time to find the truth", Ronald and Seibert seemed "adamant" about not wanting to give much information, and they asked that the applications be sent to Joseph's address. Ibid. The Respondent argues that Ronald did not want to provide an address or his identification, and it wasn't unusual to meet families at each other's homes so applications could all be collected together. Id. at 25.

Dana Camadine

The Respondent characterized Camadine's testimony as "very sketchy." Id. at 26. The Respondent points out that she did not meet him or the Hunsickers. Ibid. The Respondent argues that he completed the applications sloppily, but that errors on applications do not amount to fraud. Ibid.[34]

Ronald Hunsicker

The Respondent argues that he met Ronald at Joseph's home in Trenton, and Ronald advised him to use Joseph's address. Ibid. The Respondent argues that Joseph had "buyer's remorse" and he did not want to pay for the policies when the premiums became due. Ibid.[35] The Respondent argues that Ronald gave "misleading" testimony so his brother would not have to pay for the policies. Ibid.

The Respondent argues that he obtained Ronald's number, date of birth, and work information on the application from Ronald, that Joseph would not know this information, and there is no way he could have obtained this information except from Ronald. Id. at 27.

[34] To support this contention, the Respondent cites to T2 66:1-150:1. This is 84 pages of transcript and encompasses part of Robin's testimony, all of Seibert's testimony, and part of Shannon's testimony. This is generally unhelpful when trying to locate particular testimony.

[35] To support this contention, the Respondent cites to T3 61:1-224:1 and T4 5:1-80:1. This is 225 pages of transcript and all but the redirect examination of the Respondent. This is generally unhelpful when trying to locate particular testimony. The Respondent's testimony was considered.

The Respondent points out that Joseph, who paid for the policies, never testified in this case. Ibid. Further, neither Combined nor the Department requested a handwriting sample from the Respondent or the Hunsickers. Id. at 28.

The Respondent states that the family's policies cost $600 a month, which is "a very reasonable price for insurance" and not indicative of fraud. Ibid.

Kumar's Finding of Fact

The Respondent argues that when making credibility determinations, the ALJ failed to consider that the Respondent recollected the events the best that he could. Ibid.[36] The Respondent argues that the events at issue took place between October 16, 2015 to December 14, 2015, and the Court reviewed the Respondent's testimony almost six years later. Id. at 28-29.

The Respondent notes that the OTSC was issued on May 25, 2018 and the Respondent did not receive a hearing until three years later. Id. at 29. The Respondent argues that his "due process rights were obviously denied" due to the "countless" adjournments. Ibid. When the hearing was finally held, the Respondent's "recollection was not as good as it could have been." Ibid. The Respondent argues that it was "arbitrary and capricious" for the ALJ to adjourn the case numerous times and then to find that the Respondent's testimony was unreliable. Ibid.

Kathleen Seibert

The Respondent argues that the Respondent was sloppy in preparing Seibert's application, and that using a "C" instead of a "K" is insignificant, and not the "smoking gun" the Department portrays it to be. Id. at 30. The Respondent argues that the Respondent did meet with Seibert.

[36] To support this contention, the Respondent cites to T3 61:1-224:1 and T4 5:1-80:1. This is 225 pages of transcript and all but the redirect examination of the Respondent. This is generally unhelpful when trying to locate particular testimony. The Respondent's testimony was considered.

Ibid.[37]

Robin Leigh Hunsicker

The Respondent submits that he met Robin at her home in Roebling and that any incorrect information on the application was transposed in error. Ibid. The Respondent argues that Joseph "encouraged" Robin to testify so that the policies could be canceled. Ibid. The Respondent argues that although she testified that she did not know about the Combined policies, she spoke with her uncle about canceling the policies. Id. at 31.[38]

Nicholas Catalano

The Respondent argues that Catalano's testimony "was entirely not credible" and "was entirely geared to protect" Combined. Ibid. The Respondent states that "it is important to note" that he "did not even speak" to any of the Hunsickers. Further, he testified that he did not have personal knowledge if the Respondent forged any signatures. Ibid.[39]

Investigator Eugene Shannon

The Respondent argues that Shannon was not an impartial witness and that it is "important to note" that Shannon never met with any of the Hunsickers. Ibid.

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[37] To support this contention, the Respondent cites to T2 49:1-61:25. This is the entirety of Seibert's testimony, and is generally unhelpful when trying to locate particular testimony. Seibert did not testify that she met with the Respondent. She testified just the opposite, that she never met the Respondent. T2 52:6-17.

[38] To support this contention, the Respondent cites to T2 62:1-97:1. This is the entirety of Robin's testimony, and is generally unhelpful when trying to locate particular testimony. Robin testified that her uncle asked her to cancel the policies at T2 66:16-20; 84:7-18.

[39] To support this contention, the Respondent cites to T2 97:1-103:25. Catalano does not testify in this section of the transcript that he has no personal knowledge if the Respondent forged any signatures. Catalano testified that he does not have personal knowledge if the Respondent forged signatures at T2 113:12-15. He testified that he never spoke to any member of the Hunsicker family at T2 110:19-24.

The Respondent states that the ALJ noted that the Respondent's appointment book does not contain a meeting with Robin on December 16, 2015, the hearing was held in 2020, and many people do not keep their appointment books for five years. Id. at 31-32. He argues that he did not have a secretary to keep his appointments and "he was overwhelmed." Id. at 33.

The Respondent emphasized that Shannon testified that he could not state that the Respondent forged any signatures, did not request a handwriting expert, and gave no explanation as to why a handwriting expert was not consulted. Id. at 32.

The Respondent argues that the ALJ "cites many findings of facts" regarding the Respondent's meetings with Joseph, but Joseph never testified at the hearing. Ibid. The Respondent argues that the "petition is once again over relying on the residuum rule." Ibid. The Respondent argues that the ALJ's "findings of fact as to Joseph Hunsicker just further proves that the ALJ issues findings of facts that were arbitrary and capricious." Ibid.

The Respondent argues that inconsistencies in Respondent's testimony, such as where Joseph was employed, the type of identification that Ronald provided, and the Respondent not being unable to recall if he witnessed Robin's signatures, can be explained by the hearing being held five years after the events that led to the litigation. Id. at 33-34.

Additional Findings of Fact

The Respondent describes Camadine's testimony as unclear, and "slanted." Id. at 34. The Respondent argues that she never met with the Respondent or the Hunsickers. Ibid.[40] The Respondent also argues that Camadine did not obtain a handwriting expert. Ibid. The Respondent

[40] To support this contention, the Respondent cites to T2 66:1 to 150:1. Not only is this a large portion of the transcript and generally unhelpful when trying to locate particular testimony, but Camadine did not testify on the second day of hearings. The correct transcript citation for Camadine's testimony that she did not meet with the Respondent in person is T1 127:1-6. She testified that she did not meet with the Hunsickers. T1 129:10-12.

also argued that Camadine's investigative report contained the hearsay statements of Robert and was not reliable. Ibid. (citing Ex. P-47).

The Respondent argues that the ALJ made "too many assumptions" and Joseph, who filed the charges "did not even testimony." Id. at 34-35.

The Respondent argues that Shannon's report also contains the hearsay statements of Robert "who did not even testimony." Id. at 35. The Respondent argues that the ALJ relied too heavily on hearsay and the residuum rule. Ibid.

The Respondent repeated his arguments that Catalano's testimony was "slanted" to protect Combined, that Shannon was a partial witness, did not conduct a detailed investigation, and did not meet with any of the Hunsickers in person. Ibid.

The Respondent argued that Ronald, Seibert, and Robin had an interest in the proceedings. Ibid. Specifically, they wanted to help Joseph "get out of the contracts for the policies." Ibid.

The Respondent argues that although the witnesses testified about the errors in the applications, it is not fraud "if an agent is sloppy and prepared incomplete and shoddy applications." Ibid.

The Respondent again argues that if his testimony was inconsistent it was because the hearing was repeatedly delayed, and the Respondent had trouble remembering events from 2015. Ibid. The Respondent states that his arguing with the Deputy Attorney General during his testimony should have no bearing on the findings of fact. Ibid.

The Respondent argued that he was uncomfortable with the iPad, but was forced to use it and this contributed to the errors on the applications. Id. at 36-37.[41]

[41] To support this contention, the Respondent cites to T3 61:1-224:1 and T4 5:1-80:1. This is 225 pages of transcript and all but the redirect examination of the Respondent. This is generally unhelpful when trying to locate particular testimony. The Respondent's testimony was considered.

Additional Facts

The Respondent submits that the ALJ should have found additional facts including: that the Respondent was not extensively trained on the iPad and was uncomfortable with its use; he witnessed the applicants sign the applications; Joseph never testified; all the applications were adequately prepared; the Respondent was unaware that Joseph's account was overdrawn and Joseph could afford the policies; Ronald advised the Respondent he would sign the policy at his brother's home; the Respondent met Ronald; the Respondent adequately processed Seibert and Ronald's applications with the instructions given by Ronald; the misspelling of Seibert's first name is evidence that he was sloppy, but not guilty of fraud; and the wrong height and weight information for Ronald is inconsequential and sloppy, but not evidence of fraud. Id. at 37-39.

The Respondent's Penalties and Fines were Excessive

The Respondent argues that he is a "first-time offender" and the revocation of his producer license is excessive. Id. at 39. The Respondent argues that the ALJ did not explain why revocation, instead of suspension for a defined length of time, was appropriate. Ibid. The Respondent submits that a limited suspension is reasonable and should be imposed. Ibid.

The Respondent argues that the ALJ did not analyze why attorney's fees of $35,000 was appropriate. Ibid. The Respondent argues that the hearing was repeatedly and unnecessarily delayed, violating his due process. Id. at 40. The Respondent argues that ordering attorneys' fees compounds this violation because the Respondent wanted to defend himself. Ibid.

The Respondent points to several cases to argue that revocation, attorney's fees, and fines are excessive. The Respondent first points to Commissioner v. Yuyi Kong, Consent Order (09/13/21) where the Kong was fined $1,500 for falsely attesting that she witnessed applicants sign on three life insurance applications. Ibid.

The Respondent next points to Commissioner v. Lompado, Consent Order (05/28/21) where the Lompado was fined $7,500 for Producer Act violations and $3,000 for Fraud Act violations for falsely attesting that she witnessed an applicant's signature on two life insurance applications. Ibid.

Lastly, the Respondent relies on Commissioner v. Panwala, Consent Order (05/28/21) where Panwala was fined $6,000 for her two employees, one licensed and one unlicensed, falsely attesting that they witnessed an applicant's signature on two applications for life insurance. Ibid.

Summary of the Case

The Respondent argues that the ALJ's findings of fact were "a culmination of an exaggeration of the facts." Id. at 41. The Respondent argues that there was no fraud, and at the most the Respondent had no support staff, made clerical mistakes, and "was sloppy." Ibid. The Respondent argues that it is "convenient" that the Department's "major witnesses" Ronald, Seibert, and Robin are all related and "that all of their testimony 'jives' and is consistent." Ibid.

The Respondent argues that his unemployment case against Combined "heavily influenced" Camadine's and Catalano's testimony. Ibid.

The Respondent argues that the Department did not obtain a handwriting expert to prove their allegations of fraud and there was no evidence of forgery. Ibid. The Respondent argues that the ALJ's findings of fact "directly contradict" each other because the ALJ found that there was a "clear case of forgery" without any type of expert testimony.[42] Id. at 41-42.

The Respondent argues that the total penalty of $65,774.25 and revocation of his insurance producer license is excessive. Id. at 42. The Respondent argues that the fees imposed violate the

[42] The ALJ found that the Department did not prove that the Respondent forged another's signatures in violation of N.J.S.A. 17:22S-40(a)(10). Initial Decision at 45-46.

Kimmelman factors. Ibid. The Respondent argues that he is a "first-time offender" with a moderate income. Ibid. The Respondent argues that "there only was in essence one alleged violation" involving Joseph, who wished to purchase insurance, and the ALJ should have only found one violation. Ibid.[43]

The Respondent argues that the attorneys' fees and costs of investigation are excessive, given that the case took almost four years to be heard and the Department violated the Respondent's due process rights by repeatedly adjourning the case. Ibid. When the hearing was finally held, the Respondent could not possibly remember the "intricacies of preparing 16 insurance applications."[44] Id. at 42-43. The Respondent argues that he should not be penalized $44,744.25 because he wanted to defend himself at a hearing. Id. at 43.

The Respondent submits that these penalties are "outrageous" when compared with similar cases. Ibid. The Respondent argues that a "first-time offender" should not have his license revoked. Ibid. The Respondent argues that he did not steal from anyone in the Hunsicker family, but "simply sold insurance products to them." Ibid. The Respondent argues that he was sloppy, was an unlikeable witness, and probably sold too much insurance, but "absolutely" did not commit fraud. Ibid.

Department Reply

The Department argues that the Respondent "alludes" to facts that had already been dismissed by the ALJ and attempts to raise irrelevant facts. Department Reply at 2. The

[43] The Department did not present any evidence as to any violations involving Joseph. It is unclear what violation the Respondent is referring to.

[44] Although the OTSC alleged that the Respondent submitted sixteen insurance policy applications, at the hearing, the Department presented proof as to only eight of them.

Department alleges that the Respondent's exceptions do not address or rebut the overwhelming evidence that he submitted applications which contained materially false information. Ibid.

The Department argues that the Respondent did not offer support for his proposed findings of fact and instead makes "grandiose proclamations" about witnesses' motives without any support in the record. Id. at 2-3.

The ALJ's reliance on the Residuum rule

The Department states that the Respondent argues that the ALJ unduly relied on the residuum rule to support the conclusion that the Respondent submitted fraudulent insurance applications to Combined for Robert and Ronald. Id. at 3. Further, the Department asserts that the Respondent objects to the ALJ's findings of fact as they relate to Joseph, who was not present to testify at the hearing. Ibid. The Department argues that these objections are meritless. Ibid.

Ronald Hunsicker's Testimony

The Department argues that Ronald gave credible testimony that he never met the Respondent, never applied for insurance with him, and never signed any applications. Ibid. (citing Initial Decision at 10). The Department argues that the ALJ's findings of fact were based on Ronald's testimony and the applications submitted on his behalf. Ibid.

The Department argues that Ronald testified about the incorrect information in the applications and that he identified photos from Mexico taken the day the Respondent submitted an insurance application on his behalf. Id. at 4 (citing Initial Decision at 10-11, Ex. P-12).

The Department states that the Respondent argued that the ALJ's conclusions cannot be accepted because Joseph, who paid for the policies, was not called as a witness. Ibid. The Department argues that Joseph is not needed to testify because Ronald, the applicant, testified.

Ibid. Accordingly, the Department argues, the ALJ appropriately relied on Ronald's testimony in finding that the Respondent violated the Producer and Fraud Acts. Ibid.

Joseph Hunsicker's Applications are not in Dispute

The Department argues that the Respondent objected to findings of fact regarding Joseph's individual policy applications because Joseph never testified at the hearing. Ibid. (citing Initial Decision at 38). The Department states that the ALJ did not make a finding that policy applications submitted on Joseph's behalf were fraudulent. Ibid. at 4-5. The Department argues that the Respondent's argument that Joseph's failure to testify led to arbitrary and capricious findings is meritless. Id. at 5.

Robin Hunsicker's Applications

The Department argues that the Respondent did not try to address the false material information contained in Robin's applications and instead attempts to create a conspiracy theory between the Hunsicker family members. Ibid. (citing Respondent Exceptions at 15). The Department argues that the Respondent's appointment book did not contain an appointment with Robin and his responses to interrogatories were inconsistent with his testimony. Ibid. (citing Initial Decision at 28).

Kathleen Seibert's Testimony

The Department argues that Seibert credibly testified that the insurance applications submitted on her behalf contained false basic biographical information, such as her name and address. Ibid. (citing Initial Decision at 13). The Department states that although the Respondent argues that he heard Seibert's first name as "Catherine" when he met with her, when interviewed by Shannon, he blamed the spelling mistake on his iPad. Id. at 6 (citing Initial Decision at 28). The Department argues that based on Seibert's credible testimony and inconsistencies in the

Respondent's testimony, not the residuum rule, the ALJ found that the Respondent violated the Fraud Act and the Producer Act. Ibid.

Limited Application of the Residuum Rule

The Department argues that the ALJ correctly applied the residuum rule and found that the applications submitted on Robert's behalf violated the Producer and Fraud Act. Ibid. The Department points out that the Respondent did not cite to any legal citation for his argument that Robert's applications should not have been admitted into evidence because the ALJ used the residuum rule excessively. Ibid. (citing Respondent Exceptions at 3).

The Department argues that the residuum rule permits hearsay evidence, but the final decision cannot be based on hearsay alone and must contain "a residuum of legal and competence evidence in the record to support [the decision]." Id. at 7 (citing Weston, 60 N.J. at 51). The Department argues that the ALJ appropriately found that the Department satisfied the residuum rule by producing two witnesses, Camadine and Shannon, who spoke to Robert and memorialized their conversations with him in their respective investigative reports, which concluded that Robert never met the Respondent, applied for insurance, or signed any applications. Ibid. (citing Initial Decision at 42).

The Department asserts that the hearsay rule does not require non-hearsay evidence for each finding of fact when the ultimate decision concerns a course of conduct that is unbecoming of a regulated professions. Ibid. (citing Cowan, 224 N.J. Super. at 750-51). The Department argues that it is within the Commissioner's discretion under the residuum rule to consider Robert's applications and find that the Respondent engaged in conduct unbecoming of an insurance producer. Id. at 7-8.

Conclusion

The Department requested that the Commissioner disregard the Respondent's Exceptions and find that the Respondent forged signatures on the insurance applications in violation of the Producer and Fraud Acts, and adopt the remainder of the Initial Decision. Id. at 8.

Respondent Reply[45]

I initially note that much of the Respondent's reply appears to constitute additional exceptions or to reiterate his exceptions to the Initial Decision, rather than solely a reply to the Department's exceptions. In the interest of reflecting the complete record, all of the Respondent's reply is summarized herein.

The Respondent submits that the Initial Decision contradicts itself, on one hand finding that that the Respondent committed fraud, while simultaneously finding that the Department failed to prove that the Respondent forged signatures on the insurance applications at issue. Respondent Reply at 1-2.

The Respondent agrees that there is no proof that the Respondent forged any signatures. Id. at 2. The Respondent argues that the Department alleged that the Respondent tried to take advantage of Joseph, a senior citizen, to "inflame the case and obtain an unfair result." Ibid. The Respondent denies that he took advantage of Joseph and points out that Joseph, the payor of the policies, did not testify at the hearing. The Respondent argues that the allegations that he attempted "to commit elder abuse were made in bad faith" and prejudiced the Respondent. Ibid.

The Respondent argues that the evidence demonstrates that he did not forge signatures on the applications at issue. Id. at 2-3. The Respondent argues that the ALJ incorrectly found that

[45] The Respondent himself also submitted a documented titled "Pro Se Response to DOBI Exceptions." This was considered, but not summarized herein.

the Respondent never met with the Hunsickers, that they never applied for insurance, and that the Respondent never witnessed their signatures. Id. at 3. The Respondent reiterates that they testified "in 'concert' to help out Uncle Joe Hunsicker to cancel the policies." Ibid.

The Respondent requests that the Commissioner adopt the ALJ's findings that the Department failed to prove that the Respondent forged any of the Hunsicker's signatures in violation of N.J.S.A. 17:22A-40(a)(10). Id. at 3, 4, 5. The Respondent argues that this finding is consistent with "the voluminous evidence" that the Respondent never forged any of the Hunsickers' signatures and that there "is no possible way that any finding of forgeries can be supported in light of" the Respondent's testimony. Id. at 4. The Respondent questions how the ALJ can find that the Respondent did not commit forgery, but still justify his recommendation that the Respondent's insurance producer license be revoked. Id. at 7.

The Respondent argues that his explanation that his errors were attributable to carelessness and the iPad is "truthful, believable, and made sense." Id. at 4 (citing Initial Decision at 45).

The Respondent argues that the ALJ "was not entirely convinced" by the Hunsickers' testimony and that the ALJ's indication that he found nothing in their testimony to be "inherently unbelievable" is "not exactly a glowing affirmation" of their credibility. Ibid. (citing Initial Decision at 31, 32). The Respondent argues that the ALJ erred in not placing greater weight on the Respondent's testimony and instead incorrectly concluded that the Department's witnesses were credible and weighed their testimony more heavily. Id. at 5.

The Respondent argues that Camadine's investigative report contains the hearsay statements of Joseph, who paid for the policies, and who indicated that he did not sign applications submitted for other family members. Id. at 5-6 (citing Ex. P-47). The Respondent argues that he

was deprived of his right to cross-examine Joseph because Joseph did not testify at the hearing. Id. at 6.

The Respondent argues that Camadine's report is hearsay, and that the Department relied too heavily on the residuum rule. Ibid. The Respondent argues that Camadine was biased and never met the Respondent, and only spoke to him on the phone. Ibid. The Respondent also argues that the Respondent "was involved in bitterly disputed unemployment hearings" with Combined and was possibly going to file a wrongful termination suit. Ibid. The Respondent argues that Camadine's testimony was "biased, not reliable, and slanted to protect her employer." Ibid.

The Respondent argues that Combined has "a long history of over-selling insurance policies." Ibid. The Respondent argues that Camadine and Catalano are "high level executives" and their "testimony was not credible at all." Ibid. The Respondent argues that the ALJ failed to account for the bias in their testimonies. Ibid. The Respondent points out that the alleged offenses in this matter occurred in 2015 and attached an article about Combined's illegal conduct in Australia.[46] Ibid. The Respondent argues that this Combined pressured agents to sell insurance, and this article "conclusively proves" that Camadine's and Catalano's testimony was biased. Ibid. The Respondent argues that the allegations in the article were made in 2015, the same time that the Respondent sold the Hunsickers their policies. Ibid. The Respondent argues that he is being made a scapegoat and is being "banished" because the "powerful management at Combined" wants "to sweep their questionable sales policies under the rug." Ibid. [47]

[46] The Respondent did not make these allegations or enter this article into evidence at the hearing. Pursuant to N.J.A.C. 1:1-18.4(c), evidence not presented at a hearing should not be submitted, referred to, or incorporated as part of exceptions.

[47] The Respondent testified that Combined trained him to seek out referrals and to sell additional products to existing customers who were happy with Combined. T4 93:14-94:1. He never testified that Combined directed to him to violate any laws, pressure customers, or give them misleading

The Respondent "vigorously objects" to the ALJ's recommendation to revoke the Respondent's license and impose fines, fees, and penalties totaling $65,744.25. Id. at 3.

The Respondent requests that the Commissioner issue a Final Decision rejecting the findings of the ALJ, exculpating the Respondent, and voiding the fines, penalties and attorneys' fees. Id. at 9.[48]

LEGAL DISCUSSION

As noted by the ALJ, 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 37 N.J. at 143; Polk, 90 N.J. 550 (1982). The evidence must be such as would lead a reasonably cautious mind to a given conclusion. Bornstein, 26 N.J. at 263. 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." Lewis, 678 N.J. at 47.

Allegations Against the Respondent

Count One of the OTSC charges the Respondent with violations of the Producer Act, which governs the licensure and conduct of New Jersey insurance producer licensees and empowers the Commissioner to suspend or revoke the license of, and to fine, an insurance producer for violations of its provisions. Count Two of the OTSC charges the Respondent with violations of the Fraud

information to induce them to purchase policies that they did not need or could not afford, as alleged in the article attached to the Respondent's Reply.

[48] Before the issuance of this Final Order and Decision, the Respondent requested oral argument three times, on February 15, 2022; March 2, 2022; and March 17, 2022. The Respondent sent a follow-up to his third request for oral argument on March 29, 2022. The Respondent's first request was denied on February 28, 2022, and the Respondent's second request was denied on March 8, 2022. This Final Decision and Order was issued before denying the Respondent's third request.

Act which empowers the Commissioner to impose penalties for violations of its provisions. The Counts are discussed below.

Credibility Findings

The ALJ found that the Respondent was not a credible witness. Initial Decision at 34-38. The trial judge's credibility findings are significantly influenced by "the opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." State v. Locurto, 157 N.J. 463, 472, (1999) (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). Even the best and most accurate transcript "is like a dehydrated peach; it has neither the substance nor the flavor of the peach before it was dried." Ibid. (citation and internal quotation marks omitted).

There is no basis on which to reject the ALJ's credibility determinations because there is no specific evidence that such findings are not supported by sufficient competent and credible evidence in the record. See N.J.A.C. 1:1-18.6(c). Further, the ALJ's reasoning for his credibility determinations was thorough, detailed, and persuasive.

The Respondent does not point to any credible evidence in the record as a basis on which to overturn the ALJ's credibility findings. He characterized Camadine's testimony as "sketchy" as well as "biased, not reliable, and slanted to protect her employer." Respondent Exceptions at 26, Respondent Reply at 6. He points out that she did not meet with the Respondent. Respondent Exceptions at 26, Respondent Reply at 6. However, the Respondent does not point to any evidence in the record as to why Camadine was not credible, only stating that she was protecting Combined, who was involved in an unemployment dispute with the Respondent. Similarly, he described Catalano's testimony as "slanted" but does not point to any evidence in the record as to why he was not credible. Respondent Exceptions at 34. The Respondent argues that he was sloppy and had trouble using the iPad. Respondent Exceptions at 8, 21-22, 26, 36-37. He also vacillates

between arguing that Hunsicker family members forgot meeting him, and that they conspired to testify against him to "help out their uncle." Respondent Exceptions at 15, 35. However, the policies had been canceled five years before the hearing. T1 67:12-15. The cancelation of the policies was not contingent upon their testimony that they had never met with the Respondent or applied for the policies. The Respondent argues that the Department's "major witnesses…are all related. It is quite convenient that all of their testimony 'jives' and it is consistent." Respondent Exceptions at 41. The Respondent points to nothing in the record to support his contention that the Hunsicker family conspired against him. It is quite likely that their testimony was consistent because it was truthful.

Count One: Producer Act Violations

Count One alleges that the Respondent submitted sixteen insurance policy applications to Combined for members of Joseph's immediate or extended family and did not witness the signature of the prospective insured, did not have a face to face meeting with the prospective insured regarding the application before submitting it, and forged the prospective insured's signature on the application, in violation of N.J.S.A. 17:22A-40(a)(2), (5), (7), (8), (10), (16), and N.J.A.C. 11:17A-4.2.

Although the OTSC alleged that the Respondent submitted sixteen insurance policy applications, the Department presented proof as to only eight of them during the hearing. The following eight applications are at issue: two applications submitted on behalf of Ronald, one dated November 7, 2015 (Ex. J-17), and one dated December 9, 2015 (Ex. P-1); one application for Seibert dated December 9, 2015 (Ex. J-22); three for Robin, one application dated November 7, 2015 (Ex. J-18), and two applications dated December 16, 2015 (Ex. P-2 and Ex. P-3); and two applications submitted on behalf of Robert, both dated November 2, 2015 (Ex. J-13 and Ex. J-14).

The ALJ found that the Department proved the violations in this Count, except N.J.S.A. 17:22A-40(a)(10), because the Department could not prove that the Respondent forged the applicants' signatures. Initial Decision at 45-46.

In its Exceptions, the Department argues that it established by a preponderance of the evidence that the Respondent violated the Producer and Fraud Act by forging applicants' signatures in violation of N.J.S.A. 17:22A-40(a)(10). Department Exceptions at 7. The Department argues that the Respondent was the only person who had possession of the iPad that Combined issued to him and the applications were submitted using that iPad, "there is no doubt that [the Respondent] forged the signatures on the insurance applications submitted to Combined." Ibid.

The Department argues that Camadine's investigative report also supports the conclusion that the Respondent forged the applicants' signatures. Ibid. Camadine's investigation report contains an interview with Joseph, where he states that he only signed his own application, and not those of his family members. Id. at 8 (citing Ex. P-47). The Department argues that aside from the Respondent, Joseph was the only other person present when the applications were submitted, and was listed as the payor of the policies. Ibid.

In his Exceptions, the Respondent argues that the ALJ placed too much reliance on the residuum rule. Respondent Exceptions at 7. He further argues that he met with Robin, Ronald, and Seibert. Id. at 8, 15, 26, 30. He states that he made errors on the applications because he wasn't comfortable using the iPad, and was generally sloppy, but mistakes don't amount to fraud. Id. at 27, 30.

In its Reply, the Department argues that Ronald, Robin, and Seibert gave credible testimony that they never met the Respondent, never applied for insurance, and never signed the applications. Department Reply at 3-6.

In his Reply, the Respondent argues that there is no proof that the Respondent forged any signatures. Respondent Reply at 2. The Respondent argues that the ALJ incorrectly found that the Respondent never met with the Hunsickers, that they never applied for insurance, and that the Respondent never witnessed their signatures. Id. at 3. The Respondent posits that they testified "in 'concert' to help out Uncle Joe Hunsicker to cancel the policies." Ibid. The Respondent states that his explanation that his errors were attributable to carelessness and the iPad is "truthful, believable, and made sense." Id. at 4.

Two Applications for Ronald

The evidence shows that the Respondent submitted two applications on Ronald's behalf. The application dated November 7, 2015 is for supplemental health insurance. Ex. J-17. Ronald testified that he did not see the application prior to his involvement in the litigation. T2 13:14-25. Ronald testified that he could not have met with the Respondent on November 7, 2015 because he was on vacation in Cozumel, Mexico and was in the airport that day. T2 19:25-26:3. He identified pictures from Seibert's phone, which include a timestamp, taken in his hotel room in Mexico at 2:00 p.m. on November 7, 2015, the day they arrived and checked into the resort. T2 22:22-24:9, Ex. P-12. The address on the application is his brother Joseph's address in Trenton, New Jersey, and he never resided there. T2 14:1-12. The application lists his wife as a dependent, and states her name is Cathy Hunsicker. Ex. J-17, T2 15:10-13. However, her name is Kathleen Seibert. T2 15:15-18. The application also states Seibert's date of birth is March 31, 1963 when it is March 31, 1964. Ex. J-17, T2 16:7-11. Further, the signature on the application is not his and he did not sign it. T2 14:13-21.

The second application that Respondent submitted on Ronald's behalf is for life insurance and is dated December 9, 2015. Ex. P-1. Ronald did not apply for insurance with Combined on

December 9, 2015. T2 17:18-25. Ronald's December 9, 2015 application contains Ronald's incorrect height, and weight. T2 18:2-15. Under the heading "Driver's License Omission Rationale" there is a note that Ronald is "[f]ixing licensing matter." Ex. P-1; T18:25-19:4. Ronald did not have an issue with his driver's license in 2015, as indicated on the application, because his license was suspended in 1990, and he did not obtain a driver's license until 2016. T2 19:5-17.

Ronald testified that he never met or spoke to the Respondent and never signed insurance applications in front of him. T2 12:3-10. Ronald became aware of the policies when he was contacted by someone at Combined. T2 12:11-18; 36:10-12.

Application for Seibert

The evidence shows that the Respondent submitted an application for life insurance on Seibert's behalf dated December 9, 2015 (Ex. J-22). Seibert did not meet with the Respondent on December 9, 2015, the date listed on the application, and she did not sign the application. T2 52:6-17. This application contains numerous errors. Seibert's first name on the application is spelled incorrectly, as the letter "C" is used to spell "Cathy", instead of the letter "K" for Kathleen. T2 50:14-23. She never spells her name with a "C." T2 55:24-56:1. Further, her last name on the application is incorrect, as it is not Hunsicker, but Seibert. T2 50:14-51:3. Under the heading "Driver's License Omission Rationale" there is a note that Seibert was "[p]ossibly having an address change." Ex. J-22. This is incorrect as Seibert did not change her address in 2015. T2 51:21-52:5. Seibert acknowledged that she signed the attestation page to cancel the policy as

"Cathy Hunsicker." Ex. P-15; T2 55:13-22. She testified that she was told to sign her name using "Cathy Hunsicker" because that was the name on the insurance policy. T2 57:2-19.

Three Applications for Robin

The evidence shows that the Respondent submitted three applications on Robin's behalf. One application is for health insurance and is dated November 7, 2015 (Ex. J-18). Two applications are dated December 16, 2015; one application is for life insurance (Ex. P-2) and one application is for health insurance (Ex. P-3).

Robin testified that she never met the Respondent, and did not meet him on November 7, 2015, the date of the application. Ex. J-18, T2 64:10-21. She never saw the application before her involvement in this litigation. T2 63:15-18. Her birthdate on the application is incorrect. T2 63:19-23. Robin testified that she did not sign the application. T2 64:3-9.

Robin also did not see the first December 16, 2015 application submitted on her behalf by the Respondent until this litigation. Ex. P-2, T2 72:24-73:1. The first December 16, 2015 application has several errors. Ex. P-2. Robin's weight and birthdate are incorrect. T2 73:12-16; 73:24-74:21. Robin testified that she did not sign this application, and never met the Respondent. T2 75:17-76:5.

Robin also did not see the second December 16, 2015 application submitted on her behalf by the Respondent until this litigation. Ex. P-3, T2 78:4-7. She never met the Respondent, and did not sign this application. T2 80:21-81:18. This application also contained several errors. Robin's height, weight, birthdate, middle initial, employer, and income were all incorrect. T2 78:8-24; 79:15-80:14. Further, she was never treated by the doctor listed on the application. T2 80:15-20.

Two Applications for Robert

The Respondent submitted two insurance applications for Robert dated November 2, 2015. One application is for accident and health insurance (Ex. J-13) and one is for life insurance (Ex. J-14). Robert did not testify at the hearing.

In the Initial Decision, the ALJ reviewed hearsay and the residuum rule. Initial Decision at 41-42. The ALJ acknowledged that Robert did not testify during the hearing regarding the applications submitted on his behalf. Id. at 41. During her testimony, Camadine testified that she spoke to Robert who informed her that while he gave the Respondent his name, address, and date of birth over the phone, Robert did not meet with the Respondent, and did not apply for the policies. Id. at 41. The ALJ noted that Camadine's testimony is supported by the memorialization of her interview with Robert in her investigative report. Id. at 42 (citing Ex. P-47). Shannon also interviewed Robert and memorialized the conversation in a report. Ibid. (citing Ex. P-37). Accordingly, the ALJ found that while Robert gave the Respondent information over the phone, he did not apply for a policy, never met with the Respondent, and did not sign the two applications that the Respondent submitted under his name. Ibid.

Hearsay is a statement, other than one made by the declarant while testifying at the hearing, offered in evidence to prove the truth of the matter asserted. N.J.R.E. 801. Hearsay is admissible in Administrative cases, subject to the judge's discretion. Hearsay evidence which is admitted shall be accorded whatever weight the judge deems appropriate considering the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability. N.J.A.C. 1:1-15.5(a). Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent

sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness. N.J.A.C. 1:1-15.5(b).

Hearsay may either be employed to corroborate other evidence, or evidence may be supported or given added probative force by hearsay testimony. The residuum rule does not require that each fact be based on a residuum of legally competent evidence, but rather focuses on the ultimate findings of material fact. Ruroede v. Borough of Hasbrouck Heights, 214 N.J. 338, 359-60 (2013) (internal citations omitted). Hearsay statements cannot provide the residuum of competent evidence that must support a fact material to the determination of a charge. Id. at 361. A legal determination cannot be based upon hearsay alone. Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony. Weston, 60 N.J. at 51 (remanding where applicant for a firearms purchaser card was denied and at both the administrative and judicial level and the decision was based upon information from a third party in an investigative report). The residuum rule "only applies to evidence which is inadmissible under the rules of evidence, but is allowed into evidence in an administrative proceeding in which the strict rules of evidence do not apply." In re Scioscia, 216 N.J. Super. 644, 654 (App. Div.), certif. denied, 107 N.J. 652 (1987).

Applying the residuum rule requires identifying the "ultimate finding of fact" that must be supported by a residuum of competent evidence. Cowan, 224 N.J. Super. 737 at 750. In Cowan, the ultimate finding of fact was whether Cowan engaged in one or more of eleven acts of unbecoming conduct, or whether Cowan was engaged in a course of unbecoming conduct of which the acts charged were examples. Ibid. There did not need to be a residuum of competent evidence to prove each act so long as "the combined probative force of the relevant hearsay and the relevant

competent evidence" sustained the ultimate finding of unbecoming conduct. Id. at 751, quoting, Weston, 60 N.J. at 52.

Here, the Respondent submitted two insurance applications for Robert dated November 2, 2015. Ex. J-13 and Ex. J-14. Robert did not testify at the hearing. Camadine's and Shannon's reports memorialize their conversations with Robert. Ex. P-37 and Ex. P-47. The reports themselves containing those statements are hearsay, but are admissible under an exception to the hearsay rule. N.J.R.E. 803(c)(6) (business records exception to the hearsay rule). However, Robert's statements in those reports are hearsay and must meet an exception to the hearsay rule. N.J.R.E. 805 (hearsay within hearsay); See also Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 375 n.1 (2010). If an investigative report contains hearsay statements, each statement must be separately admissible, or it is subject to redaction. Carmona v. Resorts Int'l Hotel, Inc., 189 N.J. 354, 379 (2007) (citing N.J.R.E. 805). There are exceptions to the hearsay rule that apply to Robert's statements contained in Shannon's and Camadine's investigative reports. Hearsay statements cannot provide the residuum of competent evidence that must support a fact material to the determination of a charge. Ruroede, 214 N.J. at 361. Evidence that is not hearsay was not presented to corroborate Robert's statements in the investigative reports.

Because the only evidence that Robert did not meet with the Respondent, did not sign the applications, and did not apply for the insurance policies is based on uncorroborated hearsay, the Department did not prove the violations related to the applications submitted under Robert's name Ex. J-13 and Ex. J-14. Accordingly, I REJECT the ALJ's determination that the Department proved that the Respondent violated of the Producer and Fraud Acts in relation to Robert's applications.

Six Applications for Ronald, Seibert, and Robin

Under N.J.A.C. 11:17A-4.2, in cases where an applicant's signature is required, an insurance producer who takes an application for insurance shall be required to witness the signature of the prospective insured on the application prior to the submission of the application to the insurer. However, this requirement may be waived by prior written authorization by insurer. Neither Catalano nor Camadine waived the requirement of N.J.A.C. 11:17A-4.2 to witness the prospective insured's signature on the application. T1 39:13-15; T2 103:9-12.

The Respondent asserts that he met with Ronald, Robin, and Seibert. Id. at 8, 15, 26, 27, 30. According to the Respondent, the six applications contain so many errors because Ronald, Robin, and Seibert all provided him with false information, including names and addresses, and when they did give him information that was accurate, he was careless and entered some of it into the iPad incorrectly. Id. at 11, 20, 21, 25, 27, 30, 36, 39, 41, Respondent Reply at 4. The Respondent argues that Ronald, Robin, and Seibert then agreed to give false testimony in order to help Joseph cancel policies. Id. at 15, 26, 34, 41, Respondent Reply at 3. However, these policies had been canceled for five years. Initial Decision at 33. This version of events strains credulity.

The Respondent submitted six applications for three separate individuals without the applicants' knowledge or consent. These applications were rife with false information including basic information, such as the applicants' birthdates, and names. The false information contained in these applications goes beyond mere sloppiness or inattention to detail. For example, while it may be possible that the Respondent spelled Seibert's first name with a "C" rather than a "K" because he was sloppy, an entirely different last name cannot be considered to be mere sloppiness. The Respondent never gives a satisfactory explanation as to how he got Seibert's last name wrong. It also does not explain why Seibert would sign her first name incorrectly and give a completely

different last name. He also cannot explain how he met with Ronald on November 7, 2015 when Ronald and Seibert were travelling to Mexico that day. Further, whether or not Respondent was comfortable using the iPad or preferred paper applications has no bearing on whether he met with Ronald, Seibert, and Robin and witnessed their signatures on the applications.

Accordingly, I ADOPT the ALJ's determination that the Department proved violations of N.J.S.A. 17:22A-40(a)(2) (violating any insurance law or regulation), (5) (intentionally misrepresenting the terms of an insurance contract, policy, or application), (7) (committing any insurance unfair trade practice or fraud), (8) (fraudulent coercive or dishonest practices, demonstrating incompetence, unworthiness, or financial irresponsibility), (16) (any fraudulent act), and N.J.A.C. 11:17A-4.2 (in cases where an applicant's signature is required, an insurance producer who takes an application for insurance shall be required to witness the signature of the prospective insured on the application prior to the submission of the application to the insurer).

The Respondent is also charged with violating N.J.S.A. 17:22A-40(a)(10), which prohibits forging another's name on an application for insurance. The ALJ did not find that the Respondent committed this violation, and the Department took exception to this finding. Shannon testified that he could not "say that Mr. Kumar forged the signatures, but someone else other than the applicant placed the signatures." T3 13:3-8. No evidence was presented that the Respondent was the person who signed the applications at issue. Accordingly, I also ADOPT the ALJ's determination that the Department did prove that the Respondent violated N.J.S.A. 17:22A-40(a)(10) (forging another's name on an application for insurance or any document related to an insurance transaction).

Count Two: Fraud Act Violations

Count Two alleges that the Respondent submitted sixteen insurance policy applications to Combined for members of Joseph's immediate or extended family for the purpose of obtaining an insurance policy, knowing that each of these applications contained a forged signature of the prospective insured, and other false or misleading information concerning any fact or thing material to the application of contract in violation of N.J.S.A. 17:33A-4(a)(3) and N.J.S.A. 17:33A-4(a)(4)(b).

Although the OTSC alleged that the Respondent submitted sixteen insurance policy applications, the Department presented proof as to only eight of them during the hearing. Having discussed the applications for Robert, above, the following six applications are still at issue: two applications submitted on behalf of Ronald; one application for Seibert; and three applications for Robin.

The ALJ found that the Department proved the violations in this Count because the applicants had no involvement with the applications and did not apply for insurance. Initial Decision at 46.

In its Exceptions, the Department argues that the preponderance of the credible witness and documentary evidence supports the legal conclusion that the Respondent forged signatures on the insurance applications submitted on behalf of members of the Hunsicker family. Department Exceptions at 8-9. By forging these signatures, the Respondent violated and N.J.S.A. 17:33A-4(a)(4)(b). Id. at 9.

In his Exceptions, the Respondent argues that the Department did not prove that he forged any signatures, and without that, the Department didn't prove fraud. Respondent Exceptions at 9, 41, 42.

In its Reply, the Department argues that the Respondent's exceptions do not address or rebut the overwhelming evidence that he submitted applications which contained materially false information. Department Reply at 2.

In his Reply, the Respondent submits that the Initial Decision contradicts itself, on one hand finding that that the Respondent committed fraud, while simultaneously finding that the Department failed to prove that the Respondent forged signatures on the insurance applications at issue. Respondent Reply at 1-2. The Respondent argues that the evidence demonstrates that he did not forge signatures on the applications at issue. Id. at 2-3.

As detailed above, the evidence shows that the Respondent submitted six applications for three separate individuals without the applicants' knowledge or consent. These applications were rife with false information, including basic information, such as the applicants' addresses, birthdates, and names. The applicants did not sign these applications. Although the Department did not prove that the Respondent forged the applicants' signatures, it is irrelevant because the Respondent was undoubtedly aware that he submitted applications with materially false information to Combined in order for these policies to be issued.

Accordingly, I ADOPT the ALJ's determination that the Department proved violations of N.J.S.A. 17:33A-4(a)(3) (conceals or knowingly fails to disclose the occurrence of an 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) because the Respondent knowingly concealed that he met with Ronald, Seibert, and Robin and failed to disclose that they did not sign their applications. I also ADOPT the ALJ's finding that the Respondent violated N.J.S.A. 17:33A-4(a)(4)(b) (makes any written or oral statement, intended to be presented to any insurance company for the purpose of obtaining an insurance policy, knowing that the statement

contains any false or misleading information concerning a material fact) because he submitted insurance applications that he knew contained false or misleading information concerning material facts.

PENALTY AGAINST THE RESPONDENT

Revocation of the Respondent's Insurance Producer License

With respect to the appropriate action to take against the Respondent's insurance producer license, I find that the record is more than sufficient to support license revocation and compels the revocation of the Respondent's license. Accordingly, I ADOPT the ALJ's recommendation that the Respondent's insurance producer license be revoked due to violations of the Producer Act.

The Commissioner is charged with the duty to protect the public welfare and to instill public confidence in both insurance producers and the industry as a whole. Commissioner v. Fonseca, OAL Dkt. No. BKI 11979-10, Initial Decision (08/15/11), Final Decision and Order (12/28/11) (citing In re Parkwood, 98 N.J. Super. 263 (App. Div. 1967)). An insurance producer collects money from insureds and acts as a fiduciary to both the consumers and the insurers they represent. Accordingly, the public's confidence in a licensee's honesty, trustworthiness, and integrity are of paramount concern. Ibid. The nature and duty of an insurance producer "calls for precision, accuracy and forthrightness." Fortunato v. Thomas, 95 N.J.A.R. (INS) 73 (1993). Additionally, a licensed producer is better placed than a member of the public to defraud an insurer. Strawbridge v. New York Life Ins. Co., 504 F. Supp. 824 (1980). A producer is held to a high standard of conduct, and should fully understand and appreciate the effect of fraudulent or irresponsible conduct on the insurance industry and on the public.

As the public, in general, is adversely affected in a significant way by insurance fraud, New Jersey views insurance fraud as a serious problem to be confronted aggressively and has a

particularly strong public policy against the proliferation of insurance fraud. Palisades Safety and Ins. Ass'n v. Bastien, 175 N.J. 144, 150 (2003). Courts have long recognized that the insurance industry is strongly affected with a public interest and the Commissioner is charged with the duty to protect the public welfare. See Sheeran v. Nationwide Mutual Insurance Company, 80 N.J. 548, 559 (1979). Because of the strong public interest in regulating insurance producers, revocation has consistently been imposed against the licenses of New Jersey insurance producers that engage in fraudulent acts. Commissioner v. Hohn, OAL Dkt. No. BKI 12444-11, Initial Decision (11/01/12), Final Decision and Order (03/18/13).

I find that revocation of the Respondent's insurance producer license is warranted. The Respondent fraudulently produced six applications for three separate individuals without the applicants' knowledge or consent. These applications contained a myriad of false information, including basic information such as names, addresses, and dates of birth. License revocation has also been imposed on licensed producers who submit applications with false information. Commissioner v. Tepedino, OAL Dkt. BKI-14056-17, Initial Decision (07/01/19), Final Decision and Order (01/27/20), aff'd No. A-2797-19, (App. Div. Nov. 18, 2021) (revoking license for, among other violations, making misrepresentations regarding client information and providing a false certification on application forms). Accordingly, I find that revocation of the Respondent's insurance producer license is appropriate.

Monetary Penalty Against the Respondent

The Commissioner has broad discretion in determining sanctions for violations of the laws she is charged with administering. In re Scioscia, 216 N.J. Super. 644, 660 (App. Div. 1987). The penalties set forth in the Producer Act "are expressions by the Legislature that serve a distinct remedial purpose." Commissioner v. Strandskov, OAL Dkt. No. BKI 03451-07, Initial Decision

(09/25/08), Final Decision and Order (02/04/09). The Producer Act provides that the Commissioner may impose a penalty not exceeding $5,000 for the first offense and not exceeding $10,000 for each subsequent offense. N.J.S.A. 17:22A-45.

As noted by the ALJ, pursuant to Kimmelman, certain factors are to be examined when assessing administrative monetary penalties. 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").

The first Kimmelman factor addresses the good faith or bad faith of the Respondent. The ALJ found that the Respondent demonstrated bad faith because the Respondent submitted applications of persons whom he had never met without their knowledge or consent. Initial Decision at 51. I agree with the ALJ that the Respondent demonstrated bad faith. Accordingly, this factor weighs in favor of a higher monetary penalty.

The second factor in Kimmelman is the Respondent's ability to pay. Respondents who claim an inability to pay civil penalties bear the burden of proving their incapacity. Commissioner v. Shah, OAL Dkt. No. BKI 11903-05, Initial Decision (04/15/08), Final Decision and Order (09/02/08). An insurance producer's ability to pay is only a single factor to be considered in determining an appropriate fine and does not obviate the need for the imposition of an otherwise appropriate monetary penalty. Moreover, the Commissioner has issued substantial fines against insurance producers despite their arguments regarding their inability to pay. See Commissioner v. Fonseca, OAL Dkt. No. BKI 11979-10, Initial Decision (08/15/11), Final Decision and Order (12/28/11). (issuing a $100,500 civil penalty despite the producer arguing that he was unable to pay); See also Commissioner v. Erwin, OAL Dkt. No. BKI 4573-06, Initial Decision, (07/09/07),

Final Decision and Order (09/17/07) (fine of $100,000 imposed despite evidence of the Respondent's inability to pay); and Commissioner v. Malek, OAL Dkt. Nos. BKI 4520-05 and BKI 486-05, Initial Decision (12/06/05), Final Decision and Order (01/18/06) (fine increased from $2,500 to $20,000 even though the producer argued an inability to pay fines in addition to restitution). The ALJ reviewed the parties' arguments and Respondent's financial information and found that the Respondent did not offer any evidence in relation to his ability or inability to pay a civil penalty and a moderate penalty would be appropriate. Initial Decision at 51. I agree with the ALJ and concur that this factor weighs in favor of the imposition of a moderate monetary penalty.

The third Kimmelman factor relates to the profits obtained. The greater the profits an individual is likely to obtain from illegal conduct, the greater the penalty must be if penalties are to be an effective deterrent. Kimmelman, 108 N.J. at 138. The ALJ found that both parties agreed that the Respondent did not obtain any profit from these applications. Initial Decision at 51. This factor weighs in favor of a lower monetary penalty.

The fourth Kimmelman factor addresses the injury to the public. The Commissioner is charged with the duty to protect the public welfare and to instill public confidence in both insurance producers and the insurance industry. "When insurance producers breach their fiduciary duties and engage in fraudulent practices and unfair trade practices, the affected insurance consumers are financially harmed and the public's confidence in the insurance industry as a whole is eroded." Commissioner v. Fonseca. The ALJ found that the Respondent submitted fraudulent applications without the applicants' knowledge of consent, and in doing so violated fiduciary trust. Initial Decision at 51. I concur with the ALJ that the Respondent violated the public trust in submitting fraudulent applications to Combined and that this factor weighs in favor of a higher monetary penalty.

The fifth Kimmelman factor to be examined is the duration of the illegal activity. The Court in Kimmelman found that greater penalties are necessary to incentivize wrongdoers to cease their illegal conduct. Kimmelman, 108 N.J. at 139. The longer the illegal conduct, the more significant civil penalties should be assessed. Ibid. The ALJ found that the Respondent's illegal activity took place for two months, from September to December 2015, and this short duration supports a lower monetary penalty. Initial Decision at 52. I agree with the ALJ that this factor weighs in favor of a lower monetary penalty.

The existence of criminal punishment and whether a civil penalty may be unduly punitive if other sanctions have been imposed is the sixth factor under the Kimmelman analysis. The Supreme Court held in Kimmelman that a lack of criminal punishment weighs in favor of a more significant civil penalty because the defendant cannot argue that he or she has already paid a price for his or her unlawful conduct. Kimmelman, 108 N.J. at 139. Regarding this factor, the ALJ found that the Respondent did not face criminal punishment and this factor weighs in favor of a higher monetary penalty. Initial Decision at 52. I agree with the ALJ that this factor supports the imposition of a higher monetary penalty.

The last Kimmelman factor addresses whether the producer had previously violated the Producer Act, and if past penalties have been insufficient to deter future violations. The ALJ found that the Respondent had not previously violated either the Producer or the Fraud Act. Initial Decision at 52. I concur with the ALJ that this factor weighs in favor of a lower monetary penalty.

The Fraud Act provides that a penalty of not more than $5,000 for the first violation, $10,000 for the second violation, and $15,000 for each subsequent violation may be imposed. N.J.S.A. 17:33A-5b. The New Jersey Supreme Court held that when it comes to penalties under the Fraud Act "the Government is entitled to rough remedial justice, that is, it may demand

compensation according to somewhat imprecise formulas such as reasonable liquidated damages . . . without being deemed to have imposed a second penalty for the purpose of double jeopardy analysis." Merin v. Maglaki, 126 N.J. 430, 445 (1992), citing United States v. Halper, 490 U.S. 435 (1989), and United States ex rel Marcus v. Hess, 317 U.S. 537, 548-49 (1943).

Under both the Fraud Act and the Producer Act, the Commissioner may impose larger subsequent fines when multiple offenses have been found in a single civil action. Nasir, 355 N.J. Super. at 107 (citing Merin, 126 N.J. 430 (1992)); see also Commissioner v. Prime Insurance Syndicate, OAL Dkt. No. BKI 1168-05, First Initial Decision (01/31/06), Second Initial Decision (03/09/06), Final Decision and Order (05/24/06) (Ordering additional civil penalties, for among other reasons, for each policy involving the solicitation of insurance from an unauthorized carrier); Commissioner v. Uribe, Dkt. No. A-1285-11T1 App. Div.03/07/13) (assessing separate penalties for each of 13 violations of the Producer Act).

"[I]nsurance producers who commit insurance fraud will face civil penalties under both the Fraud Act and the Producer Act." Commissioner v. Hohn; See also Commissioner v. Furman, OAL Dkt. No. BKI 3891-06, Initial Decision (6/21/07), Final Decision and Order (9/17/07) (fining the producer $5,000, plus $1,200 in costs, and revoking the producer's license where the producer previously settled an insurance fraud lawsuit, paid a $5,000 civil penalty and admitted that he committed fraud by making false statements in connection with a life insurance application); Commissioner v. Goncalves (issuing a $5,000 civil penalty under the Producer Act, plus $312.50 in costs, against each producer where they had previously paid civil penalties under the Fraud Act); Commissioner v. Nasir, OAL Dkt. No BKI 2335-03, Order on Motion for Reconsideration of Penalties (9/9/08) (issuing a penalty of $14,000 plus $700 in costs, and revoking the producer's license where the producer had already been assessed $43,710 in penalties and attorneys' fees in

a separate action under the Fraud Act where the producer made misrepresentations on his disability application).

Weighing all of the Kimmelman factors, and based upon the violations of the Producer Act and the Fraud Act as set forth above, I ADOPT the recommendations of the ALJ that the Respondent shall pay civil monetary penalties. The ALJ found that a penalty of $1,250 per application was appropriate. Initial Decision at 52. I ADOPT the ALJ's conclusion that the Respondent should pay $1,250 per application. However, I MODIFY the ALJ's recommendation that the Respondent be fined $10,000 in civil monetary fines under the Producer Act, as I found that Department proved violations as to only six of these applications. Accordingly, I MODIFY the amount that the Respondent is ordered to pay to $7,500 for violations of the Producer Act.

Similarly, the ALJ recommended that the Respondent pay $10,000 under the Fraud Act. Initial Decision at 52. This is also $1,250 per application. I ADOPT the ALJ's conclusion that the Respondent should pay $1,250 per application. However, as I found that Department only proved violations as to six of these applications, I MODIFY the amount that the Respondent is ordered to pay to $7,500 for violations of the Fraud Act.

Pursuant to N.J.S.A. 17:33A-5.1, any person who is found to have committed insurance fraud under the Fraud Act shall be subject to a surcharge in the amount of $1,000. I ADOPT the ALJ's recommendation that the Respondent pay $1,000 for the Fraud Act surcharge.

Each application is a separate violation of the Producer Act. Separate civil penalties should be assessed for each act. Commissioner v. Young, OAL Dkt. No. BKI 07444-2015, Initial Decision (12/12/17), Final Decision and Order (06/11/18) (fining Respondent $255,000 for 102 misappropriations that violated the Producer Act); Commissioner v. Stone, OAL Dkt. No.: BKI 6301-07, Initial Decision (6/16/08); Final Decision and Order No. E08-82 (9/15/08) (Respondent

criminally convicted of theft of insurance premiums totaling approximately $20,000, and each individual misappropriation of the eighteen insurance premiums were held to constitute a violation of the Producer Act); Nasir, 355 N.J. Super. at 107-08; see also State v. Fleischman, 189 N.J. 539 (2007); Maglaki, 126 N.J. at 439 (imposition of a penalty for each false statement submitted by the defendant was appropriate).

These penalties are necessary and appropriate given the Respondent's misconduct. The Respondent submitted six applications to Combined for people he never met with. The applicants did not consent to the applications, had no knowledge of them, and did not sign them. The applications contained false information, such as names, birthdays, income, and addresses.

These penalties demonstrate the appropriate level of opprobrium for such misconduct, and will serve to deter future misconduct by the Respondent and the industry as a whole. I also note it is far less than the Department could have requested under N.J.S.A. 17:22A-45, which is a maximum penalty of $55,000 under the Producer Act.

The Respondent argues that the fine is not commensurate with prior precedent. Respondent Exceptions at 40. One case the Respondent relies on is Commissioner v. Lompado, Consent Order (05/28/21) where the Lompado was fined $7,500 for Producer Act violations and $3,000 for Fraud Act violations for falsely attesting that she witnessed an applicant's signature on two life insurance applications. Ibid. Here, this breaks down to $3,750 per application under the Producer Act and $1,500 per application under the Fraud Act. This is more than the Respondent is being assessed. Similarly, in Commissioner v, Long, Final Decision and Order (07/28/15), the Respondent was assessed $9,500 for Producer Act violations and $2,500 for Fraud Act violations for knowingly presenting and submitting three insurance applications with forged signatures, and failing to witness an insured's signature because of said forgery, for a total of $12,000. This is also more

per application than the Respondent is ordered to pay. The total $15,000 assessment under both the Producer and Fraud Acts for six applications is consistent with prior precedent.

Pursuant to N.J.S.A. 17:22A-45(c), it also is appropriate to impose reimbursement of the costs of investigation. The ALJ recommended that the Department be reimbursed $9,774.25 for costs of investigation. Initial Decision at 52. This amount is consistent with the amount in the Certification of Investigator Shannon. Certification of Eugene Shannon in Support of the Department's Costs and Ex. A attached thereto.

Pursuant to N.J.S.A. 17:33A-5(c), the Commissioner may also order attorneys' fees for any person violating the Fraud Act. The ALJ recommended that the Respondent pay $35,000 in attorneys fees. Initial Decision at 52. Deputy Attorney General Telge N. Peiris ("DAG Peiris") submitted a certification schedule of attorney fees and timekeeping statements. DAG Peiris certified that the attorneys in the Attorney General's office spent 336 hours and would be entitled to $77,353.50 in attorneys' fees. Certification of Telge N. Peiris in Support of Attorneys' Fees and Satisfaction of Rule, ¶¶8-9. Nevertheless, DAG Peiris requested only $35,000 in attorneys' fees. Id. at ¶9. I ADOPT that the ALJ's recommendation that the Respondent be assessed $35,000 in attorneys' fees. This amount is reasonable and less than half of the amount that could be ordered.

Exhibit List

The Department requested that the Commissioner correct errors regarding Exhibits P-4 and P-7, which are labeled as "Certified Transcripts of Petitioner's Oral Statement" in the Initial Decision. Department Exceptions at 4-5 (citing Initial Decision at 55-56). These exhibits are certified transcripts of the Respondent's oral statements to Investigator Shannon on February 23, 2016 and June 10, 2016. I agree with the Department and MODIFY the Initial Decision's Exhibit

List to clarify that Exhibits P-4 and P-7 are Certified Transcripts of the Respondent's Oral Statements to Investigator Shannon.

CONCLUSION

Having carefully reviewed the Initial Decision, the parties' Exceptions, Replies, and the entire record herein, I hereby ADOPT the Findings and Conclusions as set forth in Initial Decision, except as modified herein. Specifically, as to Count One, I ADOPT the ALJ's conclusions and hold that the Department proved that the Respondent violated N.J.S.A. 17:22A-40(a)(2), (5), (7), (8), and (16) and N.J.A.C. 11:17A-4.2, but did not prove a violation of N.J.S.A. 17:22A-40(a)(10) as to six applications. I REJECT the ALJ's findings that the Department proved the allegations in the OTSC as to two applications, those for Robert. As to Count Two, I ADOPT the ALJ's conclusions and hold that the Department proved that the Respondent violated N.J.S.A. 17:33A-4(a)(3) and N.J.S.A. 17:33A-4(a)(4)(b) as to six applications. I REJECT the ALJ's findings that the Department proved the allegations in the OTSC as to two applications, those for Robert.

I MODIFY the recommended civil monetary penalty and ORDER the Respondent to pay a $1,250 under the Producer Act and $,1250 under the Fraud Act for each of the six applications submitted in this matter, for a total of $7,500 under the Producer Act and $7,500 under the Fraud Act, for a total of $15,000. I ADOPT the ALJ's recommended imposition of a statutory fraud surcharge and ORDER the Respondent to pay a statutory fraud surcharge of $1,000 pursuant to N.J.S.A. 17:33A-5.1 for violating the Fraud Act. Further, I ADOPT the recommended imposition of the costs of investigation and prosecution for violations of the Producer Act and ORDER the Respondent to pay $9,774.25. I ADOPT the ALJ's recommendation of $35,000 of attorneys' fees and ORDER that pursuant to the Fraud Act, at N.J.S.A. 17:33A-5(c), the Respondent shall pay attorneys' fees totaling $35,000.

Finally, I ADOPT the ALJ's conclusion that the Respondent's insurance producer license be revoked and hereby ORDER the revocation of the Respondent's license effective as of the date of this Final Order and Decision.

It is so ORDERED on this __30_____ day of ___March_____ 2022.

_____
Marlene Caride
Commissioner

FN Kumar FO/Final Orders