

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

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Proceedings by the Commissioner of Banking )  
and Insurance, State of New Jersey, to fine, )  
suspend and/or revoke the insurance license of )  
Heinz Cherilus, Reference No. 1609539. )  
\_\_\_\_\_ )

**FINAL ORDER**

TO: Heinz Cherilus  
70 Buckley Hill Drive  
Phillipsburg, New Jersey 08865

This matter, having been opened by the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon issuance of Order to Show Cause E21-21 (the “OTSC”) alleging that Heinz Cherilus (“Cherilus”), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Cherilus was licensed as a resident insurance producer pursuant to N.J.S.A. 17:22A-32 until his license expired on April 30, 2018; and

WHEREAS, Cherilus is subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48 (“Producer Act”), the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 to 11:17D-2.8, the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -30 (“Fraud Act”) and the regulations promulgated thereunder, N.J.A.C. 11:16-1.1 to -7.10; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(d), the Commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by the

Producer Act and Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes against any person who is under investigation for or charged with a violation of the Producer Act of Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes even if the person's license or registration has been surrendered or has lapsed by operation of law; and

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

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

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

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

WHEREAS, pursuant to N.J.S.A. 17:22A-45(c), any person violating the Producer Act is subject to a penalty not exceeding \$5,000.00 for the first offense and not exceeding \$10,000.00 for each subsequent offense; additionally, the Commissioner may order restitution of moneys owed any person and reimbursement of costs of the investigation and prosecution; and

WHEREAS, pursuant to N.J.S.A. 17:33A-4(a)(1), it is a violation of the Fraud Act to present or cause to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim; and

WHEREAS, pursuant to N.J.S.A. 17:33A-4(a)(3), no person shall conceal or knowingly fail to disclose the occurrence of any event which affects any person's initial or continued right or entitlement to (a) any insurance benefit or payment or (b) the amount of any benefit or payment to which the person is entitled; and

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

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

WHEREAS, on May 28, 2021, the Commissioner issued the OTSC, alleging that Cherilus violated various New Jersey insurance laws by as set forth in the following:

**ALLEGATIONS COMMON TO ALL COUNTS**

IT APPEARING, that on April 25, 2016, Respondent became a licensed insurance producer in the State of New Jersey; and

IT FURTHER APPEARING, that at all relevant times, Respondent was the owner of a 2005 Honda Civic with a vehicle identification number ending in 7846; and

IT FURTHER APPEARING, that on or about May 9, 2017, at approximately 11:00 p.m., Respondent was involved in an automobile accident when another vehicle backed into Respondent's Honda while it was parked; and

IT FURTHER APPEARING, that the accident was not reported to the police, and no police report was issued; and

IT FURTHER APPEARING, that at the time of the accident, Respondent's 2005 Honda was uninsured; and

IT FURTHER APPEARING, that on May 19, 2017, Respondent applied to Esurance for automobile insurance coverage for his 2005 Honda, which became effective on that date; and

IT FURTHER APPEARING, that on May 20, 2017, Respondent filed with Esurance a claim for insurance benefits under his automobile insurance policy for an accident which he falsely reported as having occurred on May 20, 2017, at approximately 6:00 a.m. or 7:00 a.m. while sitting in his parked vehicle with his brother; and

IT FURTHER APPEARING, that on or about June 6, 2017, Esurance sent a Reservation of Rights letter to Respondent requesting additional information to complete its investigation of the accident, including proof of cancellation of his prior Progressive insurance policy, photos he took at the scene of the accident, contact information for the third party, maintenance records for the 2005 Honda, cell phone records including text messaging information, and his brother's contact information; and

IT FURTHER APPEARING, that on or about June 6, 2017, Respondent emailed Esurance photographs of the rear damage to his 2005 Honda; and

IT FURTHER APPEARING that, Esurance's investigation and review of the metadata of the photographs revealed the photographs were taken on May 10, 2017; and

IT FURTHER APPEARING, that on or about July 11, 2017, an Esurance representative met with the third party involved in the accident; and

IT FURTHER APPEARING, that during the recorded conversation, the third party stated that he accidentally hit Respondent's vehicle on May 9, 2017, at approximately 11:00 p.m.; and

IT FURTHER APPEARING, that in support of his statement, the third party provided Esurance with a screen shot of a text message Respondent sent to him dated May 10, 2017; and

IT FURTHER APPEARING, that on September 9, 2017, Esurance cancelled Respondent's policy due to nonpayment of premium; and

IT FURTHER APPEARING, that on November 1, 2017, Esurance denied Respondent's claim because the accident occurred prior to the inception of the policy; and

IT FURTHER APPEARING that, on December 8, 2017, Esurance denied Respondent's Personal Injury Protection claim because the accident occurred prior to the inception of the policy; and

**COUNT ONE**  
**(Producer Act)**

IT FURTHER APPEARING, that while licensed as an insurance producer, Respondent knowingly made oral statements in support of a claim for payment pursuant to an insurance policy, knowing that the statements contained false information concerning material facts, and concealed or knowingly failed to disclose the occurrence of any event which affected his initial or continued right or entitlement to (a) any insurance benefit or payment or (b) the amount of any benefit or payment to which he was entitled; and

IT FURTHER APPEARING, that specifically, when Respondent applied for a new insurance policy he concealed the fact that his car had just been damaged in an accident, and then made an insurance claim on that new policy and misrepresented that the accident had occurred after the policy was incepted, which in fact the accident occurred before the policy was incepted, in violation of N.J.S.A. 17:22A-40(a)(2), (8), and (16); and

**COUNT TWO**  
**(Fraud Act)**

IT FURTHER APPEARING that Respondent knowingly made oral statements in support of a claim for payment pursuant to an insurance policy, knowing that the statements contained false information concerning material facts, and concealed or knowingly failed to disclose the occurrence of any event which affected his initial or continued right or entitlement to (a) any insurance benefit or payment or (b) the amount of any benefit or payment to which he was entitled; and

IT FURTHER APPEARING, that specifically, when Respondent applied for a new insurance policy he concealed the fact that his car had just been damaged in an accident, and then made an insurance claim on that new policy and misrepresented that the accident had occurred after the policy was incepted, which in fact

the accident occurred before the policy was inception, in violation of N.J.S.A. 17:33A-4(a)(1) and N.J.S.A. 17:33A-4(a)(3); and

IT FURTHER APPEARING that Cherilus was given notice of the aforesaid charges and an opportunity to contest the charges at a hearing pursuant to the OTSC; and

IT FURTHER APPEARING that as set forth in the Certification of Jessica Lugo, attached as Exhibit A, under cover letter dated June 3, 2021 the OTSC was sent by certified and regular mail to the last known residential address of Cherilus at 70 Buckley Hill Drive, Phillipsburg, New Jersey 08865; and

IT FURTHER APPEARING that mailing of the OTSC by regular and certified mail to the residential address of Cherilus, according to files maintained by the Department, and the regular mail was not returned and the certified mail was delivered, constitutes lawful service, pursuant to N.J.A.C. 11:17D-2.1(a)3;

IT FURTHER APPEARING that Cherilus failed to provide written responses to the charges contained in the OTSC within 20 days as provided by N.J.A.C. 11:17D-2.1(d)(1), and therefore has waived his rights to a hearing to contest these charges and the charges deemed admitted, pursuant to N.J.A.C. 11:17D-2.1(b)(1);

**NOW, THEREFORE, IT IS on this 30 day of March, 2022,**

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

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

IT IS FURTHER ORDERED, that Cherilus shall be responsible for the payment of \$10,000 in civil penalties for violations of the Producer Act, Fraud Act, and other insurance laws cited above as follows:

Cherilus shall be responsible for the payment of civil penalties totaling \$5,000 for the Producer Act violation as described in Count 1 of the Order to Show Cause; and

Cherilus shall be responsible for the payment of civil penalties totaling \$5,000 for the Fraud Act violation as described in Count 2 of the Order to Show Cause; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45c and N.J.A.C. 11:1-32.4(b)20, Cherilus shall reimburse the Department of Banking and Insurance, Division of Insurance Enforcement and Bureau of Fraud Deterrence, for the costs associated with the investigation and prosecution of this matter, as evidenced by the Certification of Costs by Investigator Drew Gowen (attached as Exhibit B), totaling \$187.50. The Commissioner has reviewed the investigative costs application and finds the amount of time to be reasonable; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:33A-5c, Cherilus shall reimburse the Department of Banking and Insurance, Bureau of Fraud Deterrence, for the attorneys' fees associated with the investigation and prosecution of this matter, as evidenced by the Certification of Jessica Lugo, totaling \$4,500.00. The Commissioner has reviewed the attorneys' fees application and finds the amount of time to be reasonable; and

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

IT IS FURTHER ORDERED, that Cherilus shall pay the above fines and costs totaling \$15,687.50 by remitting full payment to the Commissioner of Banking and Insurance, State of

New Jersey, 20 West State Street, P.O. Box 329, Trenton, New Jersey 08625, Attention: Virgil Downtin, Chief of Investigations by certified check, cashier's check or money order made payable to the "State of New Jersey, General Treasury," within ten (10) days from the date of service of this Order; and

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

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

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



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Marlene Caride  
Commissioner