

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,)	FINAL ORDER
to fine, suspend and/or revoke the insurance)	
producer license of Henry R. Slay, Reference)	
No. 0199573.)	

TO: Henry R. Slay
120 E. Street Road, K2-07
Warminster, PA 18974

This matter, having been opened by the Commissioner of Banking and Insurance, State of New Jersey (“Commissioner”), upon information that Henry R. Slay (“Slay” or “Respondent”) may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Respondent was licensed as a resident insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-32(a) from on or about July 2, 2013 to on or about August 13, 2018 when he voluntarily surrendered his license; and

WHEREAS, Respondent 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 Insurance Information Practices Act, N.J.S.A. 17:23A-1 to -22, the Producer Licensing regulations, N.J.A.C. 11:17-1.1 to -2.17, and the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 to 11:17D-2.8; 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 this act or Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes even if the person's license or registration has been surrendered or has lapsed by operation of law; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(2), an insurance producer shall not violate any insurance 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)(5), an insurance producer shall not intentionally misrepresent the terms of an actual or proposed insurance contract, policy or application for insurance; and

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

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

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

WHEREAS, pursuant to N.J.A.C. 11:17A-4.8, an insurance producer shall reply, in writing, to any inquiry of the Department relative to the business of insurance within the time requested in said inquiry, or no later than 15 calendar days from the date the inquiry was made or mailed in cases where no response time is given; and

WHEREAS, pursuant to N.J.A.C. 11:17A-2.6, an insurance producer who solicits insurance shall be required to identify the following information to the person he or she is soliciting prior to commencing his or her solicitation: (1) his or her name as it appears on his or her insurance producer license; (2) the name of the insurer, if known, or insurance producer, that he or she is representing; and (3) the nature of the relationship between the insurance producer and the insurer or insurance producer being represented; and

WHEREAS, pursuant to N.J.A.C. 11:17A-4.5, an insurance producer shall not disclose or solicit the disclosure of personal or privileged information about an individual collected or received in connection with an insurance transaction except in conformity with N.J.S.A. 17:23A-1 to -22; and

WHEREAS, pursuant to N.J.S.A. 17:23A-3, no insurance producer shall use or authorize the use of pretext interviews to obtain information in connection with an insurance transaction, except when expressly permitted; and

WHEREAS, pursuant to N.J.S.A. 17:23A-5, an insurance producer shall clearly specify those questions designed to obtain information solely for marketing or research purposes from an individual in connection with an insurance transaction; and

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

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

WHEREAS, pursuant to N.J.S.A. 17:23A-18(a), any person violating the Insurance Information Practices Act is subject to a penalty of up to \$5,000.00 for each violation, but not to exceed \$10,000.00 in the aggregate for multiple violations; 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 for the first offense, \$10,000 for the second offense and \$15,000 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 June 24, 2019, Order to Show Cause No. E19-66 ("Order to Show Cause") was issued against Respondent, charging violations of the New Jersey Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48 ("Producer Act"), as described below:

ALLEGATIONS COMMON TO ALL COUNTS

IT APPEARING, that at all relevant times, Slay was licensed as a resident insurance producer and an agent for Combined Insurance Company of America ("Combined Insurance"), whereby he sold, among other insurance products, "Accident Protector" and "Sickness Protector" insurance policies (collectively, "Protector Insurance"); and

IT FURTHER APPEARING, that Slay engaged in a fraudulent scheme to market and sell Protector Insurance by soliciting individuals without identifying himself as an insurance agent or employee of Combined Insurance, and offering to compensate them for answering and signing a written "survey"; and

IT FURTHER APPEARING, that unbeknownst to said individuals, Slay was not conducting a survey, but rather it was a

pretext to deceive them into completing and signing applications for Protector Insurance; and

IT FURTHER APPEARING, that Slay then submitted to Combined Insurance said fraudulent applications for Protector Insurance on behalf of individuals who had not requested information regarding said coverages and were not aware that they had, in fact, completed insurance applications for same; and

IT FURTHER APPEARING, that with each fraudulent Protector Insurance application, Slay also remitted from his own personal funds the first month's insurance premium due thereon, which lead Combined Insurance to issue said policies and pay him a commission thereon; and

IT FURTHER APPEARING, that upon investigating and verifying several fraud complaints filed by individuals deceived by Slay, Combined Insurance cancelled the fraudulent insurance policies, and terminated Slay's employment "For Cause" effective on or about February 24, 2015; and

COUNT 1

IT FURTHER APPEARING, that on or about January 11, 2015, Slay approached "I.W." for purposes of soliciting and selling her "Accident Protector" and "Sickness Protector" insurance coverages without identifying himself as an insurance agent or employee of Combined Insurance Company of America in violation of N.J.S.A. 17:22A-40(a)(2) and (8); and N.J.A.C. 11:17A-2.6; and

IT FURTHER APPEARING, that Slay withheld material information regarding the terms, conditions and nature of said applications of insurance, and intentionally misrepresented to "I.W." that the documents she was reviewing and signing were "surveys" when, in fact, they were applications for insurance, in violation of N.J.S.A. 17:22A-40(a)(2), (5), (8) and (16); N.J.S.A. 17:23A-3; and N.J.A.C. 11:17A-4.5; and

IT FURTHER APPEARING that Slay submitted said insurance applications in the name of "I.W." and earned commissions thereon without the authorization, approval or knowledge of "I.W.," in violation of N.J.S.A. 17:22A-40(a)(2), (8) and (16) and N.J.S.A. 17:33A-4(a)(4)(b); and

COUNT 2

IT FURTHER APPEARING, that on or about January 11, 2015, Slay approached "S.B." for purposes of soliciting and selling him "Accident Protector" and "Sickness Protector" insurance coverages without identifying himself as an insurance agent or employee of Combined Insurance Company of America in violation of N.J.S.A. 17:22A-40(a)(2) and (8) and N.J.A.C. 11:17A-2.6; and

IT FURTHER APPEARING, that Slay withheld material information regarding the terms, conditions and nature of said applications of insurance, and intentionally misrepresented to "S.B." that the documents he was reviewing and signing were "surveys" when, in fact, they were applications for insurance, in violation of N.J.S.A. 17:22A-40(a)(2), (5), (8) and (16); N.J.S.A. 17:23A-3 and -4; and N.J.A.C. 11:17A-4.5; and

IT FURTHER APPEARING that Slay submitted said insurance applications in the name of "S.B." and earned commissions thereon without the authorization, approval or knowledge of "S.B.," in violation of N.J.S.A. 17:22A-40(a)(2), (8) and (16); and N.J.S.A. 17:33A-4(a)(4)(b); and

COUNT 3

IT FURTHER APPEARING, that on or about June 20, 2016, the Department of Banking and Insurance ("Department") contacted Slay regarding its investigation into the above matters and, in response, Slay agreed to appear at the Department's office on June 24, 2016, to discuss same; and

IT FURTHER APPEARING, that on or about August 2, 2016, the Department served Slay with written questions regarding its investigation into the above matters and again requested that he appear at the Department's office on August 10, 2016, to discuss same; and

IT FURTHER APPEARING, that Slay failed to appear at the Department's office on either June 24, 2016 or on August 10, 2016, and also failed to respond, in any manner, to the Department's written inquiries dated August 2, 2016, in violation of N.J.A.C. 11:17A-4.8; and

IT FURTHER APPEARING, that that as set forth in the certification of Dakar Ross, attached hereto as Exhibit A, Respondent was given notice of the aforesaid charges and an

opportunity to contest the charges at a hearing pursuant to Order to Show Cause E19-66, and Respondent filed an Answer to the Order to Show Cause and requested a hearing, whereupon the matter was then transmitted to the Office of Administrative Law (“OAL”) as a contested matter; and

IT FURTHER APPEARING, that pursuant to an Initial Decision entered on April 20, 2022, the OAL subsequently transmitted the matter back to the Department for final disposition because Respondent failed to appear at consecutive scheduled status conferences which absences were unexplained and unexcused; and

IT FURTHER APPEARING, that on May 23, 2022, the Hon. Marlene Caride, Commissioner, entered an Order adopting the ALJ’s Initial Decision and ordering that the Respondent’s request for a hearing be deemed withdrawn and be dismissed, and therefore Respondent has waived his rights to a hearing to contest these charges and the charges are deemed admitted, pursuant to N.J.A.C. 11:17D-2.1(b)(1); and

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

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

IT FURTHER APPEARING, that the Kimmelman Factors apply to this matter as follows: (1) Respondent showed bad faith by knowingly marketing and selling insurance products without

identifying himself as an insurance agent and misrepresenting insurance applications as being a “survey”; (2) Respondent has not provided any evidence of his inability to pay a civil fine; (3) Respondent profited by earning commissions on said applications as a result of the illegal activity; (4) there was injury to the public because Respondent misled and defrauded consumers and his actions caused harm to the reputation of the insurance industry and to licensed producers everywhere; (5) the duration of Respondent’s scheme was twenty (20) months; (6) no criminal or treble damages actions have been filed against Respondent regarding his illegal activity; and (7) Respondent has no past violations; and

NOW, THEREFORE, IT IS on this 27 day of September, 2022,

ORDERED, that the charges contained in Counts 1, 2 and 3 of Order to Show Cause E19-66 are deemed admitted by Respondent, 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 resident insurance producer license of Henry Slay is hereby **REVOKED** effective upon the execution of this Final Order by the Commissioner; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c), Respondent shall pay a civil penalty in the total amount of \$50,000 to the Commissioner, determined as follows: \$10,000 for the violations in Count 1 of the OTSC (\$5,000 for the Producer Act violations and \$5,000 for the Fraud Act violations stated in Count 1 of the OTSC); \$20,000 for the violations in Count 2 of the OTSC (\$10,000 for the Producer Act violations and \$10,000 for the Fraud Act violations stated in Count 2 of the OTSC); and \$20,000 for the violations in Count 3 of the OTSC (\$10,000 for the Producer Act violations and \$10,000 for the Fraud Act violations stated in Count 3 of the OTSC); and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c), Respondent shall be responsible for the reimbursement to the Department of the costs of investigation totaling \$1,012.25. A true and exact copy of the Certification of Daxesh Patel, Department of Banking and Insurance Investigator, is attached hereto as Exhibit B; and

IT IS FURTHER ORDERED, that pursuant to N.J.A.C. 11:16-7.9(c), Respondent shall be responsible for the reimbursement to the Department for attorneys' fees totaling \$10,000.00. A true and exact copy of the Certification of Dakar Ross is attached hereto as Exhibit A and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c), Respondent shall be responsible to pay restitution to Combined Insurance Company of America in the amount of \$247.24; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:33A-5.1, Respondent shall pay a Fraud Act surcharge of \$1,000; and

IT IS FURTHER ORDERED, that Respondent shall pay the above penalties and costs to the Commissioner of Banking and Insurance, State of New Jersey, 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 days from the date of service of this Order; and

IT IS FURTHER ORDERED, that in the event full payment of the penalty 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, with post-judgment interest, in accordance with the Penalty Enforcement Law, N.J.S.A. 2A:58-10 to -12; and

IT IS FURTHER ORDERED, that the civil penalty in this Final Order is imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection

of the public health, safety and welfare, and is not intended to constitute 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 Order to Show Cause No. E19-66.



Marlene Caride
Commissioner