

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

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Proceedings by the Commissioner of)	FINAL ORDER
Banking and Insurance, State of New Jersey,)	
to fine, suspend and/or revoke the insurance)	
producer license of Michael Anthony)	
Fortunato, Reference No. 1575911.)	

TO: Michael Anthony Fortunato
9 Colonial Way
Succasunna, New Jersey 07876

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

WHEREAS, on or about March 10, 2015, Respondent was licensed as a resident insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-32(a), and maintained said license until it expired on or about August 31, 2019; 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”) and the Producer Licensing regulations promulgated thereunder, 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 this 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)(4), an insurance producer shall not improperly withhold, misappropriate or convert any monies or properties received in the course of doing insurance business; and

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

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

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

WHEREAS, pursuant to N.J.A.C 11:17C-2.1(a), all premium funds shall be held by an insurance producer in a fiduciary capacity and shall not be misappropriated, improperly converted to the insurance producer's own use, or illegally withheld by the licensee; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.2(a), all premium funds shall be remitted to the insurer or other insurance producer, as applicable, within five business days after receipt of the funds except as otherwise required or provided by this regulation; 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 of Banking and Insurance 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.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, the Commissioner issued Order to Show Cause No. E22-11 on March 21, 2022, alleging violations of the Producer Act by Fortunato as follows:

ALLEGATIONS COMMON TO ALL COUNTS

IT APPEARING, that at all relevant times, Fortunato was a licensed insurance producer in the State of New Jersey, and employed as a sales associate with the Richard Mollar Agency ("RMA"), a New Jersey licensed insurance agency affiliated with the Allstate Insurance Company ("Allstate"); and

IT FURTHER APPEARING, that on or about February 20, 2018, Fortunato accepted cash from "F.C.," a RMA client, in the amount of \$691.00 as payment for the annual premium on an Allstate automobile insurance policy, and

IT FURTHER APPEARING, that without the knowledge or approval of F.C., Fortunato did not remit the \$691.00 cash premium payment to Allstate nor to RMA, but retained possession of said funds and then converted same for his own personal use and benefit; and

IT FURTHER APPEARING, that on or about February 27, 2018, Fortunato made a payment to Allstate in the amount of the \$123.00 which was applied towards the outstanding premium due on the automobile insurance policy owned by F.C.; and

IT FURTHER APPEARING, that upon being informed that Allstate had not received full payment of the insurance premium due for F.C.'s policy, RMA investigated and determined that Fortunato had misappropriated the cash remitted to him by F.C.; and

IT FURTHER APPEARING, that on or about March 5, 2018, RMA terminated Fortunato "for cause" from his salesperson position for thief of funds; and

COUNT ONE

IT FURTHER APPEARING, that Respondent demonstrated incompetence, untrustworthiness and financial irresponsibility in the conduct of insurance business in that he received cash from a client to pay an insurance premium and failed to remit same to Allstate or RMA within five (5) days of his receipt thereof, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (7), (8) and (16) and N.J.A.C 11:17C-2.2(a); and

COUNT TWO

IT FURTHER APPEARING, that Respondent failed to operate in a fiduciary capacity and engaged in fraudulent and deceitful conduct in the conduct of insurance business in that he misappropriated and improperly converted to his own use a cash payment received from a policyholder, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (7), (8) and (16) and N.J.A.C 11:17C-2.1(a); and

COUNT THREE

IT FURTHER APPEARING, that in the course of its investigation, the Department of Banking and Insurance ("DOBI") issued correspondence dated December 4, 2018 and June 24, 2019 requesting that Respondent appear at its offices and provide information regarding the insurance transaction involving F.C. and RMA; and

IT FURTHER APPEARING, that Respondent failed to appear and did not provide the requested information to DOBI, in violation of N.J.A.C. 11:17A-4.8; and

IT FURTHER APPEARING, that as set forth in the certification of Dakar Ross (Exhibit A), Fortunato was given notice of the aforesaid charges and an opportunity to contest the charges at a hearing pursuant to Order to Show Cause E22-11, which was duly served on Fortunato by certified mail, RRR, and regular mail sent to the address listed on this Final Order in accordance with N.J.A.C. 11:17D-2.1(a)(3); and

IT FURTHER APPEARING, that Respondent initially filed an answer to the OTSC and requested a hearing, and thereafter, on March 7, 2023, Respondent voluntarily withdrew his answer and decided not to contest the OTSC and, on March 21, 2023, the OAL transmitted the matter back to the Department given Respondent had withdrawn his request for a hearing and waived his rights to a hearing, and the violations in the OTSC were 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 engaging in multiple violations: failing to remit insurance premium; misappropriation of premium; and failing to appear and produce records for Department; (2) Respondent has not provided any evidence of his inability to pay a civil fine; (3) Respondent

profited by misappropriating \$691.00; (4) there was injury to the public by Respondent's misappropriation of client's funds; (5) Respondent's violations were committed as a separate isolated incident in one month; (6) no criminal or treble damages actions have been filed against Respondent regarding his illegal activity; and (7) Respondent has no prior violations; and

NOW, THEREFORE, IT IS on this 3 day of May, 2023,

ORDERED, that the charges contained in Counts One, Two and Three of Order to Show Cause E22-11 are deemed admitted by Michael A. Fortunato, 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 expired resident insurance producer license of Michael A. Fortunato is hereby **REVOKED** effective upon the execution of this Final Order by the Commissioner; and

IT IS FURTHER ORDERED, that Fortunato shall be responsible for the payment totaling \$25,000.00 in civil penalties for violations of the Producer Act cited above as follows:

Fortunato shall be responsible for the payment of civil penalties to the Division of Insurance Enforcement totaling \$5,000.00 for the Producer Act violations as described in Count One of the Order to Show Cause; and

Fortunato shall be responsible for the payment of civil penalties to the Division of Insurance Enforcement totaling \$10,000.00 for the Producer Act violations as described in Count Two of the Order to Show Cause.; and

Fortunato shall be responsible for the payment of civil penalties to the Division of Insurance Enforcement totaling \$10,000.00 for the Producer Act violations as described in Count Three of the Order to Show Cause; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c), Fortunato shall reimburse the Department of Banking and Insurance, Division of Insurance Enforcement for the costs associated with the investigation and prosecution of this matter, as evidenced by the Certification of Costs by Investigator Daxesh Patel (Exhibit B), totaling \$700.00. The Commissioner has reviewed the investigative costs application and finds the amount of time to be reasonable; and

IT IS FURTHER ORDERED, that Fortunato shall pay the above penalties and costs totaling \$25,700.00 to the Commissioner of Banking and Insurance, State of New Jersey, P.O. Box 329, Trenton, New Jersey 08625, Attention: Virgil Dowtin, Chief of Investigations, by certified check, cashier's check or money order made payable to the "State of New Jersey, General Treasury," within ten 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. E22-11.



Marlene Caride
Commissioner