

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DOCKET NO.: BKI-03013-21
AGENCY DOCKET NO.: OTSC #E21-08

JUSTIN ZIMMERMAN,¹)
ACTING COMMISSIONER,)
NEW JERSEY DEPARTMENT)
OF BANKING AND)
INSURANCE,)
)
Petitioner,)
)
v.)
)
WAYNE SCHULTZ,)
)
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”), and all powers expressed or implied therein, for the purposes of reviewing the August 28, 2023 Initial Decision (“Initial Decision”) of Administrative Law Judge Hon. Danielle Pasquale (“ALJ”). In the Initial Decision, the ALJ recommended that Wayne Schultz (“Respondent”) pay \$2,500 in civil penalties and \$836.55 in costs of investigation for the admitted violations as alleged in Order to Show Cause No. E21-08 (“OTSC”).

¹ Pursuant to R. 4:34-4, Acting Commissioner Justin Zimmerman has been substituted in place of former Commissioner Marlene Caride in the caption.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On February 25, 2021, the Department of Banking and Insurance (“Department”) issued the OTSC against the Respondent which sought to revoke the Respondent’s insurance producer license, impose civil monetary penalties, and costs of investigation, for violations of the Producer 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 issued commercial notes to his client from a defunct shell corporation and by failing to repay the Notes, Respondent committed a fraudulent act in violation of N.J.S.A. 17:22S-40(a)(16); and

Count Two: Respondent, by failing to notify the Commissioner of the FINRA Consent Letter barring Respondent from associating with any Financial Industry Regulatory Authority (“FINRA”) member firm in any capacity within 30 days, or at all, violated N.J.S.A. 17:22A-40(a)(19) and N.J.S.A. 17:22A- 47(a); and

Count Three: Respondent, by failing to notify the Commissioner of the Bureau of Securities order revoking his agent registration within 30 days, or at all, violated N.J.S.A. 17:22A-40(a)(19) and N.J.S.A. 17:22A-47(a); and

Count Four: By violating the New Jersey Rules of Professional Conduct and having his New Jersey law license suspended, Respondent demonstrated unworthiness to hold an insurance producer license.

On March 17, 2021, the Respondent filed an Answer and requested a hearing. The matter was transferred to the Office of Administrative Law (“OAL”) on March 23, 2021 pursuant to N.J.S.A. 52:14B-1 to -31 and N.J.S.A. 52:14F-1 to -23.

On December 21, 2022, the Department moved for Summary Decision on all counts of the OTSC and Respondent filed opposition on January 10, 2023. The Department filed its Reply on January 23, 2023. On June 13, 2023 the parties submitted a joint stipulation, resolving the substantive issues in the OTSC. Initial Decision at 2. The Respondent stipulated to liability on Counts Two and Three of the OTSC and revocation of his insurance license and the Department

withdrew Count One.² Ibid. The remaining issue before the ALJ was the appropriate amount of administrative penalties. Ibid. On July 14, 2023, the parties submitted briefs as to the appropriate penalties.³ On August 28, 2023, the ALJ issued her Initial Decision and recommended that the Respondent pay \$2,500 in civil penalties and \$836.55 in costs of investigation and prosecution.

THE ALJ'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

The ALJ found the following facts which the parties had stipulated to. The ALJ found that the Respondent was licensed as an insurance producer in New Jersey pursuant to N.J.S.A. 17:22A-32(a) from March 22, 1983 until his license expired on October 31, 2018. Id. at 3. On or about February 5, 2016, the Respondent entered into a Financial Industry Regulatory Authority Letter of Acceptance, Waiver and Consent (“FINRA Consent Letter”), pursuant to which Respondent was barred from associating with any FINRA firm in any capacity. Ibid. Respondent failed to notify the Department of the FINRA Consent Letter within thirty days. Ibid. This was in violation of N.J.S.A. 17:22A-40(a)(19) and N.J.S.A. 17:22A-47(a) as alleged in Count Two the OTSC. Ibid.

The ALJ found that on July 19, 2016, the New Jersey Bureau of Securities issued a Summary Revocation Order (“Summary Revocation Order”), which revoked Respondent’s agent registration pursuant to N.J.S.A. 49:3-58. Ibid. The Respondent failed to notify the Department of the Summary Revocation Order within thirty days. Ibid. This was in violation of N.J.S.A. 17:22A-40(a)(19) and N.J.S.A. 17:22A-47(a) as alleged in Count Three the OTSC. Ibid.

² Count Four of the OTSC did not contain alleged violations of the Producer Act. Instead, Court Four provides that by violating New Jersey Rules of Professional Conduct and having his New Jersey law license suspended, the Respondent demonstrated unworthiness to hold an insurance producer license.

³ It appears that the Department submitted an additional brief on the appropriate penalties dated July 20, 2023. However, it is identical to the brief submitted on July 14, 2023, except for the date.

The ALJ found that as alleged in Count Four of the OTSC, revocation of the Respondent's insurance producer license is appropriate under N.J.S.A. 17:22A-40(a). Ibid. Additionally, the Respondent is subject to a civil monetary penalty pursuant to N.J.S.A. 17:22A-45(c) for two violations of the Producer Act, with the exact amount determined upon a weighing of the factors in Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123, 137-140 (1987). Ibid.

The ALJ also found the additional facts based on the unopposed documentary evidence.

The ALJ stated that Counts Two and Three of the OTSC which the Respondent agreed not to contest were for failure to notify the Department of the FINRA Consent Letter and the failure to notify the Department of the Summary Revocation Order. Id. at 4. Both actions arose from one complaint against him by the same person. Ibid. The Respondent admitted in an e-mail to a Department investigator that he failed to notify the Department because he was overwhelmed trying to find a registered representative to assume his financial advisory files. Ibid.

The ALJ found that the New Jersey Disciplinary Review Board ("DRB"), which reviews attorney misconduct cases prosecuted by the Office of Attorney Ethics ("OAE"), suspended the Respondent's law license for six months. Ibid. In its December 5, 2019 decision, the DRB discussed the Respondent's careless bookkeeping and his barter arrangement with a friend who was also a client where the Respondent would take loans, which he considered a retainer for legal work. Ibid. The DRB found that Respondent's conduct was less egregious than in those cases that supported disbarment. Id. at 5. Further, the DRB found that although Respondent's conduct was "unorthodox" he did not take advantage of his client, nor did the barter arrangement cause the client financial harm. Id. at 4, 5.

The ALJ also stated that the DRB found that the Respondent violated New Jersey Rules of Professional Conduct ("RPCs") 8.1(a) (making a false statement in a disciplinary matter) and RPC

8.4(c) (engaging in conduct involving dishonesty fraud, deceit or misrepresentation). Ibid. Both of the violations were based on the Respondent's failure to determine the amount of his outstanding fees before making a claim for them against his client's estate and his statements to the OAE that the loans were advanced retainers for prospective legal work. Ibid. However, the DRB did not find clear and convincing evidence that he made knowing misrepresentations about fees owed to him. Ibid.

The ALJ also found that the Respondent did not conduct any insurance business after he failed to notify the Department of the FINRA Consent Letter and the Summary Revocation Order. Ibid. The ALJ found that the Respondent did not make a profit from failing to notify the Department. Id. at 6.

The ALJ also found that the Respondent is 72 years old and has leukemia. Ibid. The Respondent's illness and license loss has affected his ability to make a living and his sole income is social security for a total income of \$31,296 a year and he does not earn enough money to pay Federal Income Tax. Ibid. He has no savings, retirement, or investment accounts. Ibid.

The ALJ further found that there are no criminal or treble damages and the Respondent has not been disciplined by the Department prior to this action. Ibid. Lastly, the ALJ found that Department Investigator Matthew Gervasio's ("Investigator Gervasio") Certification for the time he spent investigating this matter at the \$50 per hour government rate totaling \$836.55 is reasonable. Ibid.

THE ALJ'S LEGAL ANALYSIS

The ALJ noted that pursuant to N.J.A.C. 1:1-12.5(b) a motion for summary decision requires analysis of whether "the papers and discovery which have been filed, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that

the moving party is entitled to prevail as a matter of law.” Id. at 6-7. Further, the ALJ stated that the New Jersey Supreme Court has explained that when deciding a motion for summary judgment,

a determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials present, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged dispute issue in favor of the non-moving party. Id. at 7 (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)).

In order to defeat a Motion for Summary Judgment, the non-moving party must establish legally competent facts which are essential to meeting its evidentiary burden. Ibid. The ALJ further stated,

if the opposing party offers no affidavits or matter in opposition, or only facts which are immaterial or of an insubstantial nature, a mere scintilla . . . he will not be heard to complain if the court grants summary judgment, taking as true the statement of uncontradicted facts in the papers relied upon by the moving party, such papers themselves not otherwise showing the existence of an issue of material fact. Id. at 7-8 (citing Housel for Housel v. Theodoridis, 314 N.J. Super. 597, 604 (App. Div. 1998)) (additional citations omitted).

The ALJ found that there is no genuine issue of material fact because the Department has withdrawn Count One of the OTSC and the Respondent has admitted to the remaining allegations of the OTSC. Id. at 8. The ALJ stated that the sole remaining issue is the appropriate penalty. Ibid.

Penalties Recommended by the ALJ

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 8 (citing N.J.S.A. 17:22A-45). The ALJ stated that there are seven factors for determining monetary penalties set forth in Kimmelman v. Henkles & McCoy, Inc., 108 N.J. 123, 137-39 (1987). Id. at 8-9. 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 8.

The ALJ found that the Respondent's violations stem from his failure to notify the Department of the FINRA Consent Letter and the Summary Revocation Order. Ibid. The ALJ found that he did not profit from his failure to notify the Department. Ibid. The ALJ found that the public was harmed because the agencies that investigated and prosecuted the matter used public resources to do so. Id. at 9. The ALJ found that the Respondent is not subject to criminal actions or treble damages. Ibid. The ALJ also found that the Respondent has not previously violated the Producer Act. Id. at 8.

Based upon the above analysis, the ALJ recommended that a civil monetary penalty in the total amount of \$2,500 be imposed. Id. at 9. The ALJ additionally found that reimbursement of the costs of investigation and prosecution in the amount of \$836.55 was appropriate. Id. at 9-10.

EXCEPTIONS

Under N.J.A.C. 1:1-18.4(a), the parties' Exceptions were due on or before September 11, 2023. On September 7, 2023 the Department indicated via letter that it had no exceptions to the Initial Decision. The Respondent did not file any exceptions.

LEGAL DISCUSSION

The 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 v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as would lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). 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.”
State v. Lewis, 678 N.J. 47 (1975).

As stated by the ALJ, N.J.A.C. 1:1-12.5(b) provides the standard to determine whether summary decision should be granted in a contested case. Specifically, the provision states that a summary decision may be rendered “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” Ibid. The rule also provides that “when a motion for summary decision is made and supported, an adverse party, in order to prevail must, by responding affidavit, set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid.

I concur with the ALJ’s finding that there is no genuine dispute of material fact because substantive counts in the OTSC have either been withdrawn or stipulated to. Initial Decision at 8. Accordingly, summary decision is appropriate. Further, neither party has disputed the facts that relate to the penalty determination.

Allegations Against the Respondent

The OTSC charges the Respondent with violations of the Producer Act. Specifically, the OTSC alleges that the Respondent issued commercial notes to his client from a defunct shell corporation and failed to repay the commercial notes. The Respondent then entered into the FINRA Consent Letter and failed to inform the Department. The Respondent also failed to notify the Department of the Summary Revocation Order issued by the New Jersey Bureau of Securities. The OTSC alleges that this conduct was in violation of N.J.S.A. 17:22A-40(a)16, 19, and N.J.S.A. 17:22A-47(a). Lastly, the OTSC charges that by violating the New Jersey Rules of Professional

Conduct (“RPCs”) and having his New Jersey law license suspended, he is unworthy to hold an insurance producer license.

Count One

Count One of the OTSC alleges that the Respondent issued commercial notes to his client from a defunct shell corporation and failed to repay the commercial notes in violation of N.J.S.A. 17:22A-40(a)16. The ALJ found that the Department withdrew Count One of the OTSC. Initial Decision at 2, 8. I ADOPT the ALJ’s finding that this Count was withdrawn and make no findings against the Respondent as to this Count.

Count Two

Count Two of the OTSC alleges that the Respondent failed to notify the Department of the FINRA Consent Letter within 30 days in violation of N.J.S.A. 17:22A-40(a)19 and N.J.S.A. 17:22A-47(a). The ALJ found that the Respondent stipulated to liability on this Count. Initial Decision at 2, 8. The ALJ further found that on or about February 5, 2016, the Respondent entered into the FINRA Consent Letter, pursuant to which Respondent was barred from associating with any FINRA firm in any capacity. Id. at 3. Respondent failed to notify the Department of the FINRA Consent Letter within thirty days. Ibid. The Respondent admitted in an e-mail to a Department investigator that he failed to notify because he was overwhelmed trying to find a registered representative to assume his financial advisory files. Id. at 4. The ALJ found that this conduct violated of N.J.S.A. 17:22A-40(a)(19) and N.J.S.A. 17:22A-47(a) as alleged in Count Two the OTSC. Id. at 3.

I ADOPT the ALJ’s finding that the Respondent stipulated to the liability on this Count. I further ADOPT the ALJ’s factual findings that the Respondent entered into the FINRA Consent Letter and did not inform the Department within 30 days. Accordingly, I also ADOPT the ALJ’s

conclusion that this was in violation of N.J.S.A. 17:22A-40(a)19 (failing to inform the Commissioner within 30 days of the final disposition of any formal disciplinary proceedings initiated against the producer) and N.J.S.A. 17:22A-47(a) (failing to report to the Commissioner any administrative action taken against the insurance producer in another jurisdiction within 30 days of the final disposition of the matter).

Count Three

Count Three of the OTSC alleges that the Respondent failed to notify the Department of the Summary Revocation Order within 30 days in violation of N.J.S.A. 17:22A-40(a)19 and N.J.S.A. 17:22A-47(a). The ALJ found that the Respondent stipulated to liability on this Count. Initial Decision at 2, 8. The ALJ further found that on July 19, 2016, the New Jersey Bureau of Securities issued the Summary Revocation Order, which revoked Respondent's agent registration pursuant to N.J.S.A. 49:3-58. Id. at 3. The Respondent failed to notify the Department of the Summary Order within thirty days. Ibid. The ALJ found that this conduct violated N.J.S.A. 17:22A-40(a)(19) and N.J.S.A. 17:22A-47(a) as alleged in Count Two the OTSC. Id. at 3.

I ADOPT the ALJ's finding that the Respondent stipulated to the liability on this Count. I further ADOPT the ALJ's factual findings that the Respondent and did not inform the Department of the Summary Revocation Order within 30 days. Accordingly, I also ADOPT the ALJ's conclusion that conduct violated of N.J.S.A. 17:22A-40(a)19 (failing to inform the Commissioner within 30 days of the final disposition of any formal disciplinary proceedings initiated against the producer) and N.J.S.A. 17:22A-47(a) (failing to report to the Commissioner any administrative action taken against the insurance producer in another jurisdiction within 30 days of the final disposition of the matter).

Count Four

Count Four of the OTSC alleges that by violating the RPCs, and having his law license suspended, the Respondent is unworthy to be licensed as an insurance producer. The ALJ found that the Respondent stipulated to the revocation of his insurance producer license. Initial Decision at 2, 8-9. The ALJ further found that that the DRB suspended the Respondent's law license for six months. Ibid. The ALJ concluded that revocation of the Respondent's insurance producer license was appropriate. Id. at 3.

I ADOPT the ALJ's finding that the Respondent consented to the revocation of his insurance license. I further ADOPT the ALJ's factual findings that the DRB suspended the Respondent's law license for six months. Accordingly, I also ADOPT the ALJ's recommendation 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 he 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 Commissioner may levy penalties against any person violating the Producer Act, not exceeding \$5,000 for the first offense and not exceeding \$10,000 for each subsequent offense. N.J.S.A. 17:22A-45(c). In addition, the Commissioner may order reimbursement of the costs of investigation and prosecution for violations of the Producer Act. Ibid.

As stated by the ALJ, under Kimmelman, 108 N.J. at 137-139, certain factors must be examined when assessing administrative monetary penalties that may be imposed pursuant to the Producer Act.

The first Kimmelman factor addresses the good faith or bad faith of the Respondent. The Respondent admitted that he did not notify the Department of the FINRA Consent Letter because he was overwhelmed trying to find a registered representative to assume his financial advisory files. Initial Decision at 4. The Respondent also failed to notify the Department of the Summary Revocation Order. I find that 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. Kumar, OAL Dkt. No. BKI 0040-19, Initial Decision (11/29/21), Final Decision and Order (03/30/22) (issuing a fine of \$15,000 in penalties under the Producer and Fraud Act even though the Respondent argued an inability to pay). The ALJ found that the Respondent is 72 years old and has leukemia. Initial Decision at 6. The Respondent's illness and license loss has affected his ability to make a living and his sole income is social security for a total income of \$31,296 a year and he does not earn enough money to pay Federal Income Tax.

Ibid. He has no savings, retirement, or investment accounts. Ibid. I ADOPT the ALJ's conclusion that this factor weighs in favor of a lower 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 the Respondent did not profit from failing to notify the Department of the Summary Revocation Order and the FINRA Consent Letter. Initial Decision at 5, 6, 8.

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 this factor weighs in favor of a higher penalty because the public funds agencies which investigated and prosecuted the matter. Initial Decision at 9. Although I agree that this factor weighs in favor of a higher penalty, I disagree with the ALJ's reasoning. The public is harmed when licensees fail to abide by the rules that govern their profession and the public's confidence in the industry is eroded. The Respondent failed in his duty to report his the FINRA Consent Letter and the Summary Revocation Order, which impedes the Department's ability to protect the public. Accordingly, I find 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 Respondent entered into the FINRA Consent Letter on or about February 5, 2016. On July 19, 2016, the New Jersey Bureau of Securities issued the Summary Revocation Order. On September 15, 2016, the Respondent admitted in an e-mail to a Department investigator that he did not inform the Department that he had entered into the FINRA Consent Letter. This factor weighs in favor of a moderate 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. The ALJ found that the parties agreed that there are no criminal penalties or treble damages involved. Initial Decision at 6, 9. I agree and find that this factor weighs in favor of a higher 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 has not previously violated the Producers Act. Initial Decision at 6, 8. I agree and find this factor weighs in favor of a lower monetary penalty.

In light of the above Kimmelman analysis and based on the violations of the Producer Act, I ADOPT the recommendation of the ALJ that a civil monetary penalty in the amount of \$2,500 for the violations of the Producer Act is appropriate. Because the ALJ did not indicate how the fine was to be allocated among Counts Two and Three, I MODIFY the ALJ's decision to allocate the fine as follows:

As to Count Two: \$1,250 for failing to notify the Department of the FINRA Consent Letter within 30 days in violation of N.J.S.A. 17:22A-40(a)19 and N.J.S.A. 17:22A-47(a); and

As to Count Three: \$1,250 for failing to notify the Department of the Summary Revocation Order within 30 days in violation of N.J.S.A. 17:22A-40(a)19 and N.J.S.A. 17:22A-47(a).

These penalties are necessary and appropriate under the above Kimmelman analysis given the Respondent's failure to inform the Department of administrative actions against him. Moreover, 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. This penalty is also commensurate with prior matters. Commissioner v. Citron, OAL Dkt No. BKI 17272-15, Initial Decision (12/21/18), Final Decision and Order (05/06/19) (\$1,000 fine for failing to notify the Department within 30 days of the disciplinary action by the Louisiana Department of Insurance).

Pursuant to N.J.S.A. 17:22A-45(c), it also is appropriate that the Respondent reimburse the costs of investigation and prosecution. The ALJ recommended that the Respondent pay costs of investigation and prosecution in the amount of \$836.55. This amount is consistent with the amount in the Certification of Investigator Matthew Gervasio. Gervasio Cert., ¶¶ 8-10, Ex. F attached thereto. Accordingly, I ADOPT that amount and ORDER the Respondent to reimburse the Department for the costs of investigation in the amount of \$836.55.

CONCLUSION

Having carefully reviewed the Initial Decision and the record herein, I hereby ADOPT the Findings and Conclusions as set forth in Initial Decision, except as modified herein. Specifically, I MODIFY the ALJ's recommended fine to allocate the fine as follows: Count Two in the amount of \$1,250 and Count Three in the amount of \$1,250. I also ADOPT the ALJ's recommendation to revoke the Respondent's insurance producer license.

It is so ORDERED on this 12 day of October 2023.



Justin Zimmerman
Acting Commissioner

Jd Schultz FO/Insurance Orders