ORDER NO.: E25-16

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DOCKET NO.: BKI-02896-23
AGENCY DOCKET NO.: OTSC #E21-15

JUSTIN ZIMMERMAN[1], NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE, Petitioner, v. JOHN COLLINS, 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 January 23, 2025 Initial Decision on Remand ("Initial Decision on Remand") of Administrative Law Judge Hon. Irene Jones ("ALJ").

In the Initial Decision on Remand, the ALJ granted the Department of Banking and Insurance's ("Department") motion for Summary Decision against Respondent John Collins ("Collins") on Counts Two through Five as alleged in Order to Show Cause No. E21-15 ("OTSC"). Additionally, the ALJ recommended that Collins's insurance producer license be revoked, and

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

recommended the imposition of civil penalties in the amount of $35,000. Further, the ALJ recommended that Collins reimburse the Department $550 for the costs of investigation and prosecution pursuant to N.J.S.A. 17:22A-45(c).

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On March 26, 2021, the Department of Banking and Insurance ("Department") issued the OTSC against Collins which sought to revoke his insurance producer license, impose civil monetary penalties, and costs of investigation, for violations of the Producer Act. In the OTSC, the Department alleges that Collins engaged in the following activities in violation of the laws of this State:

> Count One: Respondent's sales of annuities to G.K. in August 2008, September 2008, March 2009 and August 2009 were improper and prohibited in that Respondent knowingly accepted said insurance business from Kevin Collins, who was not then licensed as an insurance producer in New Jersey, in violation of N.J.S.A. 17:22A-40(a)(2) and (12);
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> Count Two: Respondent received commissions in connection with the sales of said annuities to G.K. and thereafter paid a portion thereof to Kevin Collins as compensation for his solicitation efforts in New Jersey which was improper and prohibited in that Kevin Collins was not then licensed insurance as an producer in New Jersey, in violation of N.J.S.A. 17:22A-40(a)(2) and N.J.A.C. 11:17B-2.1(a);
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> Count Three: On behalf of G.K., Respondent completed and submitted to Sun Life Assurance Company of Canada ("Sun Life")and Reliance Standard Life Insurance Company ("Reliance") annuity applications which contained false and misleading material statements, specifically that G.K. had executed each said application while present in Connecticut when, in fact, G.K. executed all said applications in New Jersey; and that Respondent had maintained a ten (10) year business relationship with G.K when, in fact, Respondent had never met with nor spoken to G.K., in violation of N.J.S.A. 17:22A-40(a)(2), (7), (8) and (16) and N.J.A.C. 11:17A-4.2;
>
> Count Four: On behalf of G.K., Respondent had established several annuity accounts with Sun Life and authorized transfers of funds between said accounts without the authorization, knowledge, or consent of G.K., in violation of N.J.S.A. 17:22A-40(a)(2), (7), (8) and (16) and N.J.A.C. 11:17A-4.10; and

> Count Five: Respondent failed to respond or to produce any of the requested documents or information requested by the Department by the deadline, in violation of N.J.S.A. 17:22A-40(a)(2) and N.J.A.C. 11:17A-4.8.

On October 4, 2021, Collins filed an Answer and requested a hearing in a timely manner and the matter was transmitted as a contested case to the Office of Administrative Law ("OAL") on November 5, 2021 pursuant to N.J.S.A. 52:14B-1 to -31 and N.J.S.A. 52:14F-1 to -23. Initial Decision on Remand at 3. Collins filed a motion for summary decision on January 19, 2022 arguing that the OTSC was filed outside of the statute of limitations. Ibid. The ALJ granted Collins's motion and issued an Initial Decision on December 14, 2022[2] ("Initial Decision"). Ibid. The Commissioner issued the Order of Remand on January 23, 2023. ("Remand Order"). Ibid. In the Remand Order, the Commissioner remanded the matter to the OAL to develop a factual record to determine whether equity doctrines, such as the discovery rule, apply and to make a recommendation as to the applicability based on the factual record; to develop the record as to the timing of the conduct at issue in Counts Two, Three, and Four; and to clarify the ruling and make a recommendation as to the disposition of Count Five of the OTSC. Id. at 3-4.

On remand, the Department filed a motion for Summary Decision and Collins filed his opposition on July 3, 2024. Id. at 4.[3] The record was closed on July 24, 2024 and the ALJ granted summary decision to the Department on January 23, 2025.

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[2] The Initial Decision on Remand states that Collins's motion for summary decision was granted on November 10, 2022. This appears to be a typographical error as the Initial Decision granting Collins's motion is dated December 14, 2022.

[3] Collins also filed a Motion for Summary Decision on May 8, 2024. The Department filed its Opposition to Respondent's Motion for Summary Disposition on July 3, 2024. On July 17, 2024, the parties filed Replies in Further Support of their Motions for Summary Disposition. These briefs are not mentioned in the Procedural History as set forth in the Initial Decision on Remand.

ALJ'S FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS

The ALJ's Factual and Legal Findings

The ALJ noted that summary decision may be granted if "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." Initial Decision on Remand at 16 (citing N.J.A.C. 1:1-12.5(b)). The opposing party must submit responding affidavits showing that there is a genuine issue of material fact, which can only be determined in an evidentiary proceeding, and that the moving party is not entitled to summary decision as a matter of law. Ibid. Failure to do so entitles the moving party to summary judgment. Ibid. (citing Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995)).

The ALJ found the following relevant facts in granting the Department's Motion for Summary Decision.

Facts Relevant to All Counts

In 2008 and 2009, Collins was the agent of record for G.K. and facilitated G.K.'s purchase of four annuities, totaling over 1.5 million dollars. Initial Decision on Remand at 4, 6, 11. Specifically, on G.K.'s behalf, Collins submitted the following applications for annuities in the listed amounts to the listed insurers on the listed dates:

Date	Amount	Insurer
August 11, 2008	$100,000	Sun Life;
September 16, 2008	$200,000	Sun Life;
March 5, 2009	$150,000	Sun Life; and
July 22, 2009	$1,081,373.11	Reliance.

Id. at 11.

In August 2008, Collins was the agent of record for a transaction involving G.K.'s purchase of an annuity from Sun Life in the amount of $100,000. Id. at 5. To facilitate G.K.'s purchase of

this annuity, Collins completed, signed, and submitted to Sun Life the following insurance forms: Application Form, Disclosure Form, Suitability Form, and Non-Resident Information Form. Ibid.

In the September 2008 and March 2009 transactions involving G.K.'s purchase of an annuities from Sun Life, Collins completed, signed, and submitted the following insurance forms: Application Form, Disclosure Form, and Suitability Form. Id. at 5, 6.

In July 2009, Collins was the agent of record for a transaction involving G.K.'s purchase of an annuity from Reliance in the amount of $1,081,373.11. Id. at 6. To facilitate G.K.'s purchase of this annuity, Collins completed, signed, and submitted to Reliance the following insurance forms: Application Form, Disclosure Form, and Suitability Form. Ibid.

On each Suitability Form issued by Sun Life, Collins signed the "Agent's Acknowledgment," which stated: "I made a reasonable effort to obtain information from the Owner concerning their financial status, tax status, investment objectives, and other information considered reasonable." Id. at 8. On the Application Form issued by Reliance, Collins signed the agent's representation which stated: "I have reasonable grounds to [believe] that the recommendation is suitable based on the information obtained regarding financial status, tax status and investment objectives." Ibid.

On the Suitability Form issued by Reliance, Collins signed the agent's representation which stated: "I have made every effort to obtain accurate information concerning the client's financial status, tax status, investment objectives, and other information I believe is relevant in making the proper recommendation to such client." Ibid. However, Collins never made any effort to obtain financial or investment information for G.K., and never performed a suitability analysis. Id. at 6, 8, 12.

Count One: Accepting Business from an Unlicensed Individual

In the Initial Decision on Remand, there are no references to Count One, and no factual findings or legal conclusions concerning Count One.

Count Two: Payment of Commissions to an Unlicensed Person

The ALJ stated that the Department alleged in Count Two of the OTSC that Collins received commissions in connection with sales of annuities to G.K. and paid a portion to his brother, Kevin Collins ("Kevin")[4], as compensation for his solicitation efforts in New Jersey, which violated N.J.S.A. 17:22A-40(a)(2) and N.J.A.C. 11:17B-2.1(a) because Kevin was not licensed as an insurance producer in New Jersey. Id. at 2, 19.

The ALJ found that Kevin was a licensed resident insurance producer in the State of New Jersey, whose license was expired between October 31, 2008 through June 25, 2009. Id. at 4. Kevin was not a licensed insurance producer in March 2009. Id. at 7. Collins assumed that Kevin had a valid resident insurance producer license, but he did not confirm it. Id. at 4.

Collins never advised Sun Life or Reliance that Kevin was acting as an agent for G.K. in connection with annuity purchases or that there would be a split in commissions. Id. at 5, 7, 12. On each Application Form issued by Sun Life, Collins was required to certify (1) the identity of the "Primary Agent," (2) the identity of any other "Agent" involved in the transaction, and (3) to disclose the allocation of commissions to the other agent. Id. at 7. On each Application Form issued by Sun Life, Collins indicated that he was the "Primary Agent" and did not disclose the involvement of any other agent nor did he disclose any allocation of commissions. Id. at 8, 12.

[4] Since Kevin shares the last name Collins with his brother, the Respondent, Kevin will be referred to in this Final Decision and Order by his first name.

The Application Form issued by Reliance required Collins to stipulate "Yes" or "No" as to whether the transaction involved a "Commission Split," and Collins indicated "No." Id. at 8.

Collins received a commission on each of the four annuity purchases by G.K., and then paid a portion of those commissions to Kevin in 2008 and 2009. Id. at 6, 11. Collins received $48,750 in commissions from Sun Life, and $51,905 in commissions from Reliance. Id. at 6. In 2008, Collins paid Kevin a total of $27,000 for the August 2008 and September 2008 annuities purchased by G.K. Id. at 11. In 2009, Collins paid Kevin a total of $53,941.19 in commissions for the March 2009 and August 2009 annuities purchased by G.K. Ibid. This included a commission for G.K.'s purchase of the $150,000 annuity from Sun Life in March 2009, when Kevin was not licensed as an insurance producer. Id. at 6-7.

The ALJ concluded that Collins split commissions with Kevin on an annuity that Collins submitted in March 2009, when Kevin was unlicensed. Id. at 19. The ALJ concluded that the Department proved that Collins violated N.J.A.C. 11:17B-2.1(a), which prohibits an insurance producer from paying commissions to any unlicensed individual, and N.J.S.A. 17:22A-40(a)(2) which prohibits an insurance producer from violating any insurance laws or regulations. Ibid.

Count Three

The ALJ stated that the Department alleged in Count Three of the OTSC that on G.K.'s behalf, Collins completed and submitted to Sun Life and Reliance annuity applications which contained false and misleading statements, specifically that G.K. had executed the applications while in Connecticut, when G.K. executed the applications in New Jersey, and that Collins had maintained a ten year business relationship with G.K., when Collins had never met or spoke with G.K,. in violation of N.J.S.A. 17:22A-40(a)(2), (7), (8), (16), and N.J.A.C. 11:17A-4.2. Id. at 2-3.

The ALJ found that Collins had never met or personally communicated with G.K. Id. at 4. Rather, Collins only communicated with Kevin regarding G.K. and G.K.'s purchase of annuities. Id. at 5.

On each Application Form, Disclosure Form, and Non-Resident Information Form issued by Sun Life, Collins was required to identify and/or certify to the city and state where the applicant signed said documents. Id. at 7. The Application Form, IRA Disclosure Statement Form, and HIPAA Authorization Form issued by Reliance also required respondent to identify the city and state where the applicant signed said documents. Ibid. On each of these forms, Collins entered West Hartford, CT as the city and state where G.K. purportedly executed the Sun Life and Reliance documents. Ibid. However, this was inaccurate because Collins had never met G.K. Id. at 11.

On the Non-Resident Information Form issued by Sun Life, Collins checked the box indicating that he and G.K. had a pre-existing relationship, and Collins inserted that it had existed for ten years. Id. at 9. On the HIPAA Authorization for Release of Information Form issued by Reliance, Collins signed as the "Agent/Witness" even though he was not present when G.K. signed the document. Id. at 9, 11.

The ALJ found that Collins completed and submitted to Sun Life and Reliance multiple insurance forms which Collins knew contained false and misleading information and were not completed in a face-to-face meeting in violation of N.J.S.A. 17:22A-40(a)(2), which prohibits an insurance producer from violating any insurance laws or regulations; (7), which prohibits an unfair trade practice or fraud; (8), which prohibits use of dishonest practices, incompetence, or untrustworthiness; (16), which prohibits fraudulent acts; and N.J.A.C. 11:17A-4.2, which requires that in cases where an applicant's signature is required, an insurance producer who takes an

application for insurance to witness the signature of the prospective insured on the application prior to the submission of the application to the insurer. Id. at 19-20.

Count Four

The ALJ stated that the Department alleged in Count Four of the OTSC that on G.K.'s behalf, Collins established several annuity accounts with Sun Life and authorized transfers of funds between said accounts without G.K.'s authorization, knowledge, or consent in violation of N.J.S.A. 17:22A-40(a)(2), (7), (8), (16), and N.J.A.C. 11:17A-4.10. Id. at 3.

The ALJ found that Sun Life contacted Collins, as the agent of record, to advise that cash withdrawals had been made from one of G.K.'s Sun Life annuity accounts, so Collins was assessed a "chargeback" against his commission. Id. at 9, 12. Collins spoke with a representative from Sun Life on February 1, 2010, regarding an issue with chargebacks on an annuity sold to G.K. Id. at 9. Collins considered the withdrawals to be unusual and knew they were contrary to what he was told were G.K.'s investment objectives. Ibid. Collins did not contact G.K. to alert him that these cash withdrawals had been made from his annuity account. Ibid. Collins directed Sun Life to reverse the debits for cash withdrawals made on one annuity account and apply those same cash withdrawals to a different annuity account, without G.K.'s knowledge or consent, to ensure that Collins would retain his full commission. Id. at 9-10, 12.

The ALJ found that Collins reassigned cash withdrawals from one annuity account and directed Sun Life to apply said withdrawals to a different annuity account, without G.K.'s authorization or knowledge. The ALJ concluded that in doing so, Collins violated N.J.S.A. 17:22A-40(a)(2), which prohibits an insurance producer from violating any insurance laws or regulations; (7), which prohibits an unfair trade practice or fraud; (8), which prohibits use of dishonest practices, incompetence, or untrustworthiness; (16), which prohibits fraudulent acts; and

N.J.A.C. 11:17A-4.10, which requires an insurance producer to act in a fiduciary capacity in the conduct of his insurance business. Id. at 20.

Count Five

The ALJ stated that the Department alleged in Count Five of the OTSC that via letter dated March 23, 2016, the Department requested that on or before April 8, 2016, Collins provide information and produce documents in connection with all annuity transactions completed on behalf of G.K.; and that Collins failed to respond or produce any of the requested documents or information by the deadline, in violation of N.J.S.A. 17:22A-40(a)(2) and N.J.A.C. 11:17A-4.8. Id. at 3.

The ALJ found that on March 23, 2016, the Department sent a written request for information to Collins at his home address. Id. at 10, 20. Collins was required to respond by the stated and statutorily required deadline of April 8, 2016, but did not. Ibid. On April 27, 2016, the Department advised Collins in an e-mail that he failed to respond by the deadline of April 8, 2016, renewed the request for information, and resent the letter from March 23, 2016. Ibid. The ALJ found that pursuant to N.J.A.C. 11:17A-4.8, Collins would have had to respond in 15 days, or May 13, 2016. Id. at 20. On June 14, 2016, the Department e-mailed Collins and demanded a response to its initial request for information. Id. at 10, 20. On June 20, 2016, Collins's attorney replied and requested additional time to provide a response. Id. at 10, 20-21.

The ALJ concluded that by failing to respond to the Department's inquiries by the deadline, Collins violated N.J.A.C. 11:17A-4.8, which requires an insurance producer to 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 N.J.S.A. 17:22A-40(a)(2), which prohibits an insurance producer from violating any insurance laws or regulations. Id. at 21.

Statute of Limitations

The ALJ stated that Collins contends that Counts Two, Three, and Four are barred by the ten-year statute of limitations in N.J.S.A. 2A:14-1.2. Id. at 14. Collins submits that the applications were submitted to Sun Life on the following dates: August 11, 2008; September 16, 2008; and March 5, 2009. Ibid. An application was submitted to Reliance on July 22, 2009. Ibid. The OTSC, issued on April 16, 2021, was filed too late, and the related counts should be dismissed as falling outside the statute of limitations. Ibid.

The ALJ stated that the Department relied on the discovery rule to extend the statute of limitations. Id. at 12. Under the discovery rule, a cause of action does not accrue until the plaintiff discovers that there is a claim. Ibid. (citing Burd v. New Jersey Bell Tel. Co., 76 N.J. 284 (1978)). The Department contends that Metropolitan Life Insurance Company ("MetLife") advised the Department on January 25, 2016 that Collins had been terminated for cause. Id. at 12-13. It is therefore appropriate to consider that the date from which the statute of limitations runs. Id. at 13. Because the Department issued the OTSC in 2021, it met the statute of limitations under the discovery rule. Ibid.

The ALJ relied upon the decision in Commissioner v. RHM Benefits et. al., OAL Dkt No.: BKI-03589-22, Initial Decision (1/18/24), Final Decision and Order (5/22/24) where the Respondents' conduct took place between 2007 and 2009, but the Department did not become aware of the Respondents' conduct until April 2016, when an investigator read about one of the Respondent's guilty pleas in the news. Id. at 17-18. The Department then issued an Order to Show Cause in 2022, more than ten years after the events occurred, but less than 10 years from when the

Department became aware of the Respondents' conduct. Id. at 17, 18. The Commissioner upheld the ALJ's finding that the discovery rule applied, and the Order to Show Cause was issued within the ten-year limit from the date of discovery. Id. at 18. The ALJ stated that the decision in RHM was controlling and that, like the Respondents in RHM, Collins should not get the benefit of his deceit and misrepresentations. Ibid.

The ALJ concluded that the Department learned of Collins's conduct on January 25, 2016, and the statute of limitations began tolling then. Ibid. The ALJ concluded that the OTSC issued on April 16, 2021 was within the statute of limitations, not time barred, and should not be dismissed. 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 21 (citing N.J.S.A. 17:22A-45(c)).

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). 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 21-23.

As to the first factor, the good or bad faith of the respondent, the ALJ found that Collins acted in bad faith by accepting insurance business and filing paperwork stating he was the "Agent of Record" for G.K., whom he never met, never spoke to, and for whom he neglected to complete any suitability analyses. Id. at 22. Collins also submitted insurance forms that contained false and

misleading information. Ibid. Collins also acted in bad faith by approving transactions on G.K.'s annuity accounts without notifying G.K. and getting his approval. Ibid. Lastly, Collins acted in bad faith by ignoring letters and emails from the Department that required him to respond to requests by a specified deadline. Ibid. The ALJ concluded that this factor weighed in favor of a higher penalty. Ibid.

The ALJ found that the second Kimmelman factor, which examines the respondent's ability to pay civil penalties was neutral because Collins did not provide any evidence of his ability or inability to pay. Ibid.

The ALJ found that Collins received $100,655.91 in commissions from the four annuities purchased on behalf of G.K. Ibid. The ALJ found that the third factor weighed in favor of a higher penalty. Ibid.

As to the fourth factor, injury to the public, the ALJ found that Collins's actions in representing G.K. were "fraudulent and incompetent." Ibid. Further, his actions negatively impacted consumer confidence in the industry. Id. at 22-23. The ALJ concluded that this factor weighed in favor of a higher penalty. Id. 23.

Regarding the fifth factor in Kimmelman, the duration of illegal activity, the ALJ found that Collins's conduct took place from August 2008,[5] the date of the first application, to February 2010, when the "chargeback conversation that began to unravel the scheme" occurred. Ibid. The ALJ concluded that this factor weighed in favor of a higher penalty. Ibid.

Regarding the sixth factor, the existence of criminal charges or treble damage actions related to the matter, the ALJ found that Collins has not been criminally prosecuted, and paid a

[5] When analyzing the fifth Kimmelman factor, the ALJ stated that the first application was submitted in March 2008. Initial Decision on Remand at 23. However, the first application was submitted in August 2008. Id. at 11. The third application was submitted in March 2009. Ibid.

$90,000 settlement to G.K. Ibid. The ALJ found that this factor was neutral. Ibid. For the final factor in Kimmelman, previous relevant regulatory and statutory violations, the ALJ found that Collins had not had any prior discipline with the Department. Ibid. The ALJ found that this factor weighed in favor of a lower penalty. Ibid.

The ALJ also concluded that a civil monetary penalty should be imposed in the amount of $35,000 to be allocated as follows: $5,000 for the violations in Count Two; $10,000 for the violations in Count Three; $10,000 for the violations in Count Four; and $10,000 for the violations in Count Five. Id. at 23-24. The ALJ also recommended that Collins reimburse the Department $550.00 for the costs of investigation and prosecution. Id. at 24.

The ALJ found that revocation of Collins's insurance producer license was warranted. Ibid.

EXCEPTIONS

Pursuant to N.J.A.C. 1:1-18.4(a), exceptions were due on February 5, 2025. Replies were due five days after receipt. N.J.A.C. 1:1-18.4(d). On January 29, 2025, Collins requested an extension until March 5, 2025, under N.J.A.C. 1:1-18.8(d) to file his exceptions. A request for extension was granted on January 30, 2025, and the parties' exceptions were due on or before March 5, 2025. Collins filed Exception on March 5, 2025. ("Collins Exceptions"). By letter dated March 5, 2025, the Department advised that it did not have any exceptions to the Initial Decision on Remand. On March 6, 2026, the Department requested an extension until March 26, 2025 to file its reply to Collins Exceptions, which was granted. The Department filed its Reply to Collins's Exceptions on March 21, 2025. ("Department Reply").

Collins Exceptions and Department Reply

Collins took exception to four errors in the Initial Decision on Remand. First, the Initial Decision on Remand disregarded the scope of the Remand Order. Collins Exceptions at 8-15. Second, the Initial Decision on Remand did not address Collins's motion for summary decision, or his related briefs, and instead solely relied upon the Department's motion for summary decision and Collins's opposition. Id. at 16. Third, the Initial Decision on Remand overlooked case law regarding the discovery rule. Id. at 17-18. Fourth, Collins argued that the penalties imposed are unwarranted and based upon outdated legal authority. Id. at 19-22. Lastly, Collins argued that the New Jersey administrative process, whereby the Commissioner files the Order to Show Cause and the Final Decision, "sidestep[s] the findings of an impartial decision-maker" and is unconstitutional. Id. at 22-23.

The Department countered that none of Collins's arguments provide a basis to reject or modify the Initial Decision on Remand. Department Reply at 1. The Department argued that Collins did not support his argument by citing to the factual record or any applicable case law, and failed to set forth reasons why these claims would lead to modifying to rejecting the Initial Decision on Remand. Department Reply at 2.

Scope of the Remand Order

Collins argued that the Initial Decision on Remand is outside the scope of the Remand Order and must be vacated. Collins Exceptions at 8. Collins argued that on remand, the OAL may only consider the issues within the bounds of the remand. Ibid. Collins argued that the Remand Order remanded the case for further fact finding on Counts Two through Four of the OTSC to determine how these Counts related to the statute of limitations. Ibid. (citing Remand Order at 10-12). The Remand Order further directed the ALJ to clarify her ruling as to Count Five and make a recommendation regarding its disposition. Id. at 9 (citing Remand Order at 13). Collins averred

that the ALJ "wholly disregarded" the Remand Order and "strayed entirely from the narrow boundaries in which she was ordered to rule." Ibid.

The Department argued that the Initial Decision on Remand followed the Commissioner's direction in the Remand Order. Department Reply at 4. In the Remand Order, the Commissioner stated:

> This matter is remanded to the OAL to develop a factual record to determine whether equity doctrines, such as the discovery rule, apply and to make a recommendation as to the applicability based on the factual record. Further, the matter is being remanded to develop the record as to the timing of the conduct at issue in Counts Two, Three, and Four of the OTSC. It is also remanded so that the ALJ can clarify the ruling and make a recommendation as to the disposition of Count Five of the OTSC. Id. at 2 (quoting Remand Order at 12-13).

The Department argues that the ALJ analyzed the discovery rule and found that it could apply to toll the statute of limitations. Id. at 4 (citing Initial Decision on Remand at 17-18). The ALJ made comprehensive findings of fact and cited to witness testimony and documentary evidence in the record. Ibid. (citing Initial Decision on Remand at 4-11). She established a timeline as to Collins's conduct in Counts Two, Three, and Four. Ibid. (citing Initial Decision on Remand at 11-12). She then rendered a decision on Count Five based upon the comprehensive findings of fact cited to the documentary evidence in the record. Ibid. (citing Initial Decision on Remand at 20-21).

The Department states that there is "overwhelming evidence" of Collin's violations in the documents that he completed, signed, and submitted to insurance companies and his sworn testimony. Ibid.

The Documents Relied upon by the ALJ

Collins argues that the Initial Decision on Remand's factual findings all come from the Department's Motion for Summary Decision and the certificates in support thereof. Collins Exceptions at 16. The Appendix to the Initial Decision on Remand lists which exhibits the ALJ

relied upon in making her determination. Ibid. (citing Initial Decision on Remand at 26). Further, in the procedural history, the Initial Decision on Remand states, that the "Department filed a motion for summary decision, and respondent filed its answer in opposition to the motion on July 3, 2024." Ibid. (quoting Initial Decision on Remand at 4). Collins argues that the ALJ erred by not considering the Respondent's Motion for Summary Disposition dated May 8, 2024, the Department's Opposition to Respondent's Motion for Summary Disposition submitted on July 3, 2024, and Respondent's Reply in Further Support of his Motion for Summary Disposition dated July 17, 2024. Ibid.

Collins argued that the ALJ failed to set forth "the evidence they considered which supports the result, but also some indication of the evidence which was rejected." Ibid. (quoting State Dep't of Health v. Tegnazian, 194 N.J. Super. 435, 450 (N.J. Super. Ct. App. Div. 1984) (internal citations and quotation marks omitted). Collins argued that the Initial Decision on Remand is not supported by the "sufficient, competent, and credible evidence in the record" and it must be rejected.

The Department argued that Collins's briefs submitted on May 8, 2024 and July 17, 2024 set forth three arguments that the ALJ considered and rejected in the Initial Decision on Remand. Department Reply at 4. Specifically, Collins argued that the enforcement action was not brought within the statute of limitations set forth in N.J.S.A. 2A:14-1.2(a), that the statute of limitations cannot be extended by the discovery rule, and that Collins complied with the Department's request for information. Id. at 4-5. The ALJ found that these arguments lacked merit. Id. at 5. Further, the Department argued that Collins did not cite any material facts or conclusions of law that were contained in the briefs that were not addressed in the Initial Decision on Remand. Ibid. Further,

Collins failed to give any supporting reasons, connected to testimony of documentary evidence, as to why these submissions were dispositive of the issues in this matter. Ibid.

The Discovery Rule

Collins argued that Counts Two through Four of the OTSC are time-barred because they were filed ten years after the conduct at issue occurred. Collins Exceptions at 17. The Department relied upon the discovery rule, which delays when the cause of action accrues until the plaintiff discovers, or reasonably should have discovered, the "basis for the actionable claim." Id. at 18 (quoting Fox v. Millman, 210 N.J. 401, 415 (2012) (internal citations omitted)).

Collins relied upon Commissioner v. Lapinski et. al., OAL Dkt No.: BKI-02754-19, 05524-20 (consolidated), Initial Decision (8/29/22), Final Decision and Order (01/04/23); aff'd No. A-1682-22 (App. Div. May 31, 2024) certif. den. 259 N.J. 321 (2024), where the Commissioner held that the Department could not benefit from the discovery rule because it could not demonstrate harsh results that would result from enforcing the statute of limitations. Id. at 17. Collins also relies on Caride v. Young, No. A-5419-17T4, 2019 N.J. Super. Unpub. LEXIS 2195, at *13-18 (App. Div. Oct. 25, 2019) where the Department was unable to demonstrate harsh results that would necessitate relief from the ten-year statute of limitations and had to vacate penalties for actions that fell outside that period. Ibid. Collins argued that the Department is also unable to show harsh results that would warrant relief in this case. Ibid.

Collins stated that the Department is unable to cite to authority that allows for a state agency to toll a statute of limitations based on late discovery. Id. at 17, 18. Further, the Department does not justify why it took so long to file the OTSC. Id. at 17. Collins pointed out that had the Department acted expeditiously, it would have been able to issue the OTSC within the statute of limitations. Ibid. Instead, the Department issued the OTSC in 2021, five years after it first started

its investigation into Collins in 2016, and almost three years after Collins had last heard from the Department investigator in 2018. Id. at 18.

Collins stated that he was also investigated by the Financial Industry Regulatory Authority ("FINRA"), the Insurance Department of the State of Connecticut, and the Union County Prosecutor's Office, all of which declined to take any action against him. Ibid. Collins argued that this matter is distinguishable from Commissioner v. RHM Benefits et. al., which the ALJ relied upon in finding that the discovery rule applied to this case. In RHM, the Respondent had pled guilty to mail fraud. Ibid. However, no governmental or other entity found Collins guilty of any wrongdoing. Ibid.

The Department argued that the accrual of a cause of action is postponed "until plaintiff learns, or reasonably should learn, the existence of that state of facts which may equate in law with a cause of action." Department Reply at 5 (quoting Burd, 76 N.J. at 291). The Department states that Collins did not present a case that overrules or supersedes the legal principle articulated in Burd. Ibid. Further, the Remand Order made clear that the "statute of limitations that applies to New Jersey enforcement agencies specifically contemplates that the statute of limitations could be extended by a common law rule, such as the discovery rule." Id. at 6 (quoting Remand Order at 10).

The Department argued that the ALJ correctly relied upon Commissioner v. RHM Benefits et. al., where the discovery rule is justified by the victim's lack of awareness of the fraud, "which is the wrongdoer's very object" and prevents those who commit fraud from the benefits of their own deceit. Ibid. (quoting Commissioner v. RHM Benefits et. al. at 40). The Department argued that in this case, as in RHM, the Department did not have knowledge of Collins's wrongdoing until 2016, years after Collins committed fraud upon annuity companies and breached his fiduciary duty

to G.K. Id. at 6-7. It was not until January 25, 2016, when it received correspondence from MetLife that Collins had been terminated for cause that the Department learned that Collins may have violated the Producer Act. Id. at 7. Accordingly, the ALJ correctly determined that the cause of action began to accrue on January 25, 2016 and the OTSC, which was filed in 2022, was not time-barred by the statute of limitations. Ibid.

The Department argues that if the ten-year statute of limitations were to apply, there would be harsh results because all the violations, except for the least egregious, that Collins failed to respond to the Department's inquiries, would be dismissed. Ibid. The Department would then be unable to enforce the Producer Act, when it had no knowledge of Collins's conduct until years after it occurred. Ibid. The harsh result would be Collins avoiding scrutiny for his violations of the Producer Act while he was licensed as a producer in New Jersey. Ibid.

Further, Collins has not demonstrated that he would be "peculiarly or unusually prejudiced" by having to defend himself in the enforcement action. Id. at 7-8 (quoting Lopez v. Swyer, 62 N.J. 267, 276 (1973)). Collins argues that he has been prejudiced because G.K. is unable to testify because he has passed away. Id. at 8 (citing Collins Exceptions at 18). The Department argues that G.K.'s unavailability does not impede Collins's defense because none of the allegations in the OTSC require G.K.'s belief that Collins had committed any wrongdoing. Ibid. Further, in contradiction to his claim that G.K. could have testified that he was unharmed by Collins's conduct, Collins admits that because of his conduct, "one customer was injured" referring to G.K. Ibid. (quoting Collins Exceptions at 20). The OTSC solely focuses on Collins's dealings with Kevin and Collins's misrepresentations he made on forms submitted to annuity companies, which G.K. had no knowledge of at the time the conduct occurred. Ibid.

The Penalties

Collins argued that revocation of his insurance producer license is unwarranted. Collins Exceptions at 19. He argued that the Department has only revoked insurance producer licenses when doing so is necessary to protect the public. Ibid. (citing Commissioner v. Lapinski, at 96-97; Commissioner v. Fisher et. al., OAL Dkt. No. BKI 06304, Initial Decision (12/08/17), Final Decision (07/20/18), Amended Final Decision (07/30/18), aff'd No. A-5327-17T4 (App. Div. Oct. 2, 2019)). Collins argued that he worked in the insurance industry for over 40 years without any prior complaints or disciplinary history. Ibid. This is his only infraction, and it can be attributed entirely to the actions of his brother, Kevin, who was sentenced to prison for his actions. Ibid. Collins and G.K. were both unaware of Kevin's actions until Kevin turned himself into the police in August 2015. Ibid. Collins stated that he never forged documents, deceived a client, sold unsuitable products, "or d[id] anything to call his character and moral compass into question." Ibid. Collins argued that the Initial Decision on Remand only cites to outdated caselaw from 1979 and 1967. Ibid.

The Department argued that license revocation is appropriate because Collins egregiously violated New Jersey insurance laws by paying commissions to an unlicensed producer; knowingly providing false information on annuity forms; approving transactions on his client's accounts without his client's knowledge or consent; and failing to respond to the Department's requests for information. Department Reply at 9. Collins repeatedly breached his fiduciary duty to make him and his brother money. Id. at 10. Collins's conduct is incompatible with the honesty and trustworthiness required of insurance producers. Ibid. The Department concluded that Collins's license should be revoked pursuant to N.J.S.A. 17:22A-40(a).

Collins further argued that the Kimmelman factors do not support the imposition of any

fines. As to the first factor, good or bad faith, Collins stated that he did not intentionally engage in wrongdoing, and he complied with all of the Department's requests. Collins Exceptions at 20. Collins argued that no other state that licenses him has deprived him of his license "or otherwise penalized him for his brother's wrongdoing." Ibid. The Department argued that Collins's conduct, not his intent, is the determinative factor. Department Reply at 10 (citing Kimmelman, 108 N.J. at 137). The Department argued that Collins acted in bad faith by paying commissions to Kevin, who was unlicensed. Id. at 10-11. Further, Collins submitted insurance forms that he knew contained false and misleading information, approved transactions on G.K.'s annuity accounts, without G.K.'s knowledge or prior approval, and ignored correspondence from the Department asking him to submit information by a set deadline. Id. at 11.

Collins argued that the second factor, the ability to pay, does not warrant discussion because he has financial means. Collins Exceptions at 20.

Collins argued that as to the third factor, the profits obtained, he earned $19,714.72 in gross pre-tax commissions from the sale of the four annuities to G.K., which is "significantly less" than the penalties the Department seeks. Collins Exceptions at 20. Further, he last earned commissions from the sale of an annuity to G.K. in 2009—14 years ago. Ibid. The Department argues that it is irrelevant that Collins kept only $19,714.72 of the over $100,000 he earned because he shared his commissions with Kevin. Department Reply at 11. Collins signed and filed the annuity applications and was paid by the annuity companies. Ibid.

Collins argued that as to the fourth factor, injury to the public, only one customer was injured, G.K., who has been made whole by a civil case he filed against Collins, Kevin, and MetLife. Collins Exceptions at 20. Collins has not engaged in fraudulent conduct, and he complied with the Department's investigation. Ibid. Collins stated that he is honest, and has never

done anything personally to injure G.K. Ibid. The Department argued that Collins's incompetence and irresponsibility affects consumer confidence in the insurance industry. Department Reply at 11. The Department states that while Collins argued that only one customer was harmed, the annuity companies were also victimized and placed at financial risk because of Collins's misrepresentations about the material facts regarding G.K.'s four annuity purchases. Ibid.

As to the fifth factor, the duration of the illegal activity, Collins and the Department agreed that the conduct lasted for one year, from August 2008 to August 2009. Collins Exceptions at 21; Department Reply at 12. Collins argued that conduct that lasts for thirteen years supports a substantially high penalty, while conduct that lasts for two months does not. Collins Exceptions at 21 (Comparing Commissioner v. Bigica et al., OAL Dkt No.: BKI-01406, Initial Decision (05/09/16), Final Decision and Order (09/22/16); Commissioner v. Kumar, OAL Dkt. BKI-0040-19, Initial Decision (11/19/21), Final Decision and Order (03/30/22), aff'd No. 2627-21, (App. Div. Dec. 29, 2023)).

As to the sixth factor, whether there have been criminal or actions for treble damages, Collins asserted that he has "already suffered enough" for his conduct. Collins Exceptions at 21. He was fired after the OTSC was filed; it is public record that he settled with G.K. for $90,000; and he has spent significant sums of money on attorney fees to defend himself, his reputation, and his livelihood against the Department's accusations. Ibid. Collins argued that it would be unjust and unduly punitive to punish him further for his brother's actions, and these facts were not considered in the Initial Decision on Remand. Ibid. The Department argued that Collins has not been criminally prosecuted for his conduct and therefore a civil penalty in the amount of $35,000 is not unduly punitive, particularly when Collins has the means to pay it. Department Reply at 12.

As to the seventh and final factor, previous disciplinary history, Collins asserted that he

has had a long career in financial services and has had a spotless record, "apart from this unfortunate matter." Collins Exceptions at 21-22. The Department argues that this is the only Kimmelman factor that weighs in favor of a lesser penalty. Department Reply at 12.

Constitutionality of the administrative process

Collins argued that administrative due process dictates "that an agency must conscientiously concern itself with and make reasonable efforts to accommodate the rights and interests of the affected individual and genuinely account for the individualized effect of its proposed action." Collins Exceptions at 22 (quoting Seigel v. N.J. Dept. of Envtl. Prot., 395 N.J. Super. 604, 622 (App. Div. 2007)). Collins argued that the Department seeks to deprive him of his livelihood by revoking his license, as well as impose significant financial penalties. Ibid. Collins argued that the Commissioner issued the OTSC, which was dismissed by the ALJ. Ibid. Now, the Commissioner gets to issue a Final Decision on the Initial Decision on Remand. Ibid. The Commissioner is the petitioner, who "is clearly biased…and adverse" to Collins and is able to "completely sidestep the findings of an impartial decision-maker." Ibid.

Collins argued that the administrative scheme has been held by other courts to violate fundamental fairness and due process. Collins Exceptions at 22-23 (citing Knudsen v. Dep't of Motor Vehicles, 101 Cal. App. 5th 186, 198-99 (Cal. Ct. App. 2024); Horne v. Polk, 242 Ariz. 226, 230 (Ariz. 2017)). Collins argues that in SEC v. Jarkesy et. al., 603 U.S. 109 (2024), the Supreme Court held that the use of an agency tribunal to adjudicate enforcement proceedings seeking civil penalties violates the Seventh Amendment. Collins Exceptions at 23. Similarly, the current proceeding is an agency administrative tribunal that adjudicates enforcement proceedings seeking civil penalties. Ibid.

The Department argued that the combination of investigative and adjudicative functions

does not constitute a due process violation. Department Reply at 12. Rather, proof of actual bias is necessary to overturn an administrative action when an agency serves in prosecutorial and adjudicatory capacities. Id. at 12-13. The Department argues that there is no proof of bias, and Collins does not offer any. Id. at 14.

Further, the Attorney General's representation is within ethical guidelines to ensure that the final decision is unfair and impartial. Id. at 13. The Department stated that ex parte communication between the prosecuting attorney and the Commissioner is prohibited while the matter is pending in the OAL through the time that the Commissioner issues a final decision. Ibid. (citing In re Petition for Rev. of Op. No. 583 of Advisory Comm. on Prof'l Ethics, 107 N.J. 230, 234 (1987)). The Department argued that the Attorney General's representation was consistent with In re Petition for Rev. of Op. No. 583 of Advisory Comm. on Prof'l Ethics. Ibid. Collins does not offer any proof that there has been any ex parte communication. Ibid.

Collins requested that the Commissioner reject the Initial Decision on Remand and dismiss the OTSC for the grounds set forth in his Motion for Summary Decision filed May 8, 2024. Collins Exceptions at 23. The Department countered that Collins did not show any basis to reject or modify any part of the Initial Decision on Remand. Department Reply at 14.

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 noted 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.

The ALJ found that Collins failed to adduce evidence that would create a genuine issue as to any material fact and that summary decision is appropriate as to the allegations contained in Counts Two through Five of the OTSC. In his Opposition to the Department's Motion for Summary Decision, Collins does not set forth any material facts that contradict the Department's statement of material facts. Collins's Motion for Summary Decision focuses on the statute of limitations and his substantial compliance with the Department's requests for information. Collins also does not take exception to the findings of fact in the Initial Decision on Remand. Accordingly, I ADOPT the finding that there is no genuine issue of material fact and Summary Decision is appropriate.

Allegations Against Collins

The OTSC alleges that Collins accepted insurance business and paid commissions to his brother, Kevin, who was not licensed as an insurance producer in New Jersey; submitted to Sun Life and Reliance annuity applications on behalf of G.K. with false and misleading information;

and authorized transfers of funds between G.K.'s Sun Life accounts without G.K.'s authorization, knowledge or consent. Collins then did not timely respond to the Department's requests for information and documents relating to the annuity applications on behalf of G.K.

Additional Factual Findings

I ADOPT the ALJ's findings of fact, and MODIFY to add the following facts supported by the record.

Collins was first licensed as a non-resident insurance producer in New Jersey on July 23, 2004, and his license expired on December 31, 2018. Certification of Jeffrey Silfies in Support of Motion for Summary Decision ("Silfies Cert."), ¶3, Ex. 1 attached thereto.

Kevin's insurance producer license expired for a final time on May 31, 2011 and was revoked November 3, 2017 pursuant to Consent Order No. E17-103. Silfies Cert. ¶¶ 2, 3, Exs. 2 and 3 attached thereto.

In or around 2008, Kevin contacted Collins to place annuities for G.K. because Collins had expertise in annuities and Kevin and Collins had worked together in the past. T[6] 110:1-111:6; Declaration of John M. Collins in Opposition to Petitioner's Motion for Summary Decision ¶ 1; Reply Declaration of John Collins in Further Support of Motion to Dismiss Order to Show Cause ¶¶ 2-4. Kevin explained to Collins that G.K.'s goal was not to withdraw money, but rather leave assets to pass onto his beneficiaries as a wealth transfer. T 84:21-86:2. Collins recommended Sun Life policies and sent Kevin applications. T 111:19-112:1. Generally, Collins would e-mail applications to Kevin who would then meet with G.K. T 83:11-21. Collins would receive the

[6] T refers to the transcript of Collins's deposition taken on January 17, 2017, in the civil case G.K. filed against Collins, Kevin, and other defendants in the Superior Court of New Jersey, Union County. The transcript is attached as Exhibit C to the Certification of DAG Dakar Ross in Support of the Department's Motion for Summary Decision.

completed applications which he would then sign. T 204:2-16. G.K. did not come to Connecticut to sign the documents with Collins. T 131:9-14; 133:7-17; 204:12-24. The checks would come with the applications. T 88:19-89:1. Collins would then submit the applications to have the contracts issued. T 83:11-21. It was Collins's understanding that G.K. knew that Collins was acting as his insurance agent. T 223:7-10.

Collins and Kevin orally agreed to split commissions on the Sun Life and Reliance annuities sold to G.K. T 72:2-73:22. Collins's commissions may have been higher than Kevin's would have been because Collins did more business with certain companies and may have been on a higher pay scale. T 116:25-117:16. Collins received commissions from Sun Life and Reliance, not MetLife. T 214:6-19. Collins was paid on the initial deposit, and did not receive annual commissions. T 138:13-19.

The Sun Life Index Multipoint Application for the purchase of a $100,000 annuity and its associated Index Annuity Disclosure Form, Suitability Profile Form, Annuity Disclosure Form, and Non-Resident Information Form are all dated August 11, 2008. Silfies Cert. ¶¶ 9-12; Exs. 4-7. On the last page of the Application, Collins certified that he reviewed G.K.'s driver's license to identify G.K. Ex. 4 attached to Silfies Cert.

The Sun Life Index Multipoint Application for the purchase of a $200,000 annuity and its associated Index Annuity Disclosure Form and Suitability Profile Form are dated September 16, 2008. Silfies Cert . ¶¶ 13-15; Exs. 8-10. On the last page of the Sun Life Application, Collins certified that he reviewed G.K.'s driver's license to identify G.K. Ex. 8 attached to Silfies Cert.

The Sun Life Index Multipoint Application for the purchase of a $150,000 annuity and its associated Index Annuity Disclosure Form and Suitability Profile Form are dated March 5, 2009. Silfies Cert. ¶¶ 16-18; Exs. 11-13. On the last page of the Application, Collins certified that he

reviewed G.K.'s driver's license to identify G.K. Ex. 11 attached to Silfies Cert. On the Suitability Profile Form, G.K. signed the owner acknowledgement that states, in part, "I acknowledge that this annuity meets my financial objectives and that I have reviewed the applicable disclosure statement with my agent." Ex. 13 attached to Silfies Cert.

The Reliance Annuity Application for purchase of a single premium annuity and its associated IRA Disclosure Statement, HIPAA Authorization for Release of Information, and Customer Suitability Analysis and Identification Certification Form are all dated July 22, 2009. Silfies Cert. ¶¶ 19-22; Exs. 14-17. On the Reliance Annuity Application, Collins attested that he personally witnessed G.K.'s signature. Ex. 14 attached to Silfies Cert. On the IRA Disclosure Statement and HIPAA Authorization for Release of Information, Collins signed as witness to G.K.'s signature. Exs. 15 and 16 attached to Silfies Cert. On the Customer Suitability Analysis and Identification Certification Form, Collins indicated that he used G.K.'s driver's license to verify his identity. Ex. 17 attached to Silfies Cert.

None of the paperwork submitted to Sun Life referenced Kevin. T 195:15-22; Silfies Cert. ¶¶ 9-18, Exs. 4-13; Certification of Anthony Paduano in Opposition to Petitioner's Motion for Summary Decision ("Paduano Cert. I") ¶ 12, Ex. K. None of the paperwork submitted to Reliance referenced Kevin. T 196:21-24; Silfies Cert. ¶¶ 19-22, Exs. 14-17; Paduano Cert. I ¶ 12, Ex. K.

When Collins became aware that money was being withdrawn from a Sun Life account, he questioned Kevin who told him that G.K. was withdrawing money to give away so that his beneficiaries could use the money during G.K.'s lifetime. T 136:18-23; 137:9-12; 140:5-14. Collins became aware of G.K.'s withdrawal because he was subject to a chargeback. T 141:1-5. Although it was common for people to withdraw money on annuities, Collins was aware that the withdrawal was contrary to G.K.'s investment objective. T 140:15-25. Collins called Sun Life so

that G.K. would not be subjected to a surrender charge and so Collins would not lose the commission on the early withdrawal. T 137:19-20; 141:9-15. Collins did not call G.K. and assumed that Kevin spoke to G.K. T 137:23-138:11.

Collins was fired from MetLife on January 22, 2016 because he sold an indexed annuity and did not go through MetLife.[7] T 49:8-12; Letter from MetLife dated January 25, 2016 attached as Ex. 18 to Silfies Cert. Sun Life was an approved carrier, but had to be sold through MetLife. T 57:14-21.

On September 2, 2016, Kevin was convicted of theft by unlawful taking of property valued over $75,000, a crime of the second degree, based on his unauthorized withdrawals of funds totaling $926,455.90 from G.K.'s annuity and life insurance policies between 2009 and 2015. Consent Order No. E17-103 attached as Ex. 3 to Silfies Cert; Certification of Anthony Paduano in Support of Respondent's Motion for Summary Decision ("Paduano Cert. II") ¶ 1, Ex. A attached thereto. Kevin was sentenced to an eight-year term of incarceration. Paduano Cert. II ¶ 1, Ex. A attached thereto.

Sufficiency of the Initial Decision on Remand

Collins argues that the Initial Decision on Remand is both outside the scope of the Remand Order, and is insufficient because it did not address Collins's Motion for Summary Decision. Collins Exceptions at 8-16.

The Initial Decision on Remand was within the scope of the Remand Order. The Remand Order directed the OAL

> to develop a factual record to determine whether equity doctrines, such as the discovery rule, apply and to make a recommendation as to the applicability based on the factual record. Further, the matter is being remanded to develop the record

[7] It is unclear from the record if the indexed annuity was one that was sold to G.K. or another client.

> as to the timing of the conduct at issue in Counts Two, Three, and Four of the OTSC. It is also remanded so that the ALJ can clarify the ruling and make a recommendation as to the disposition of Count Five of the OTSC. Remand Order at 12-13.

The ALJ complied with the Remand Order. The ALJ developed the factual record as to the timing and conduct in Counts Two, Three, and Four. Id. at 4-12. The ALJ determined that although the conduct took place over ten years before the OTSC was issued, the discovery rule extended the time in which the Department could file the OTSC. Id. at 17-18. Further, the ALJ determined that there was sufficient evidence that the Department proved that Collins committed the violations alleged in Counts Two through Five of the OTSC. Id. at 19-21.

Further, the ALJ addressed Collins's arguments in his motion for Summary Decision. In his motion for summary decision, Collins argued that Counts Two through Four should be dismissed because the OTSC was not filed within the statute of limitations set forth in N.J.S.A. 2A:14-1.2(a). Respondent's Motion for Summary Decision at 12-13; Respondent's Reply Memorandum in Further Support of its Motion for Summary Decision at 6-9. The ALJ addressed this argument. Initial Decision on Remand at 14, 17-18. Collins also argued that the discovery rule should not apply, and the statute of limitations should not be extended. Respondent's Motion for Summary Decision at 13-16; Respondent's Reply Memorandum in Further Support of its Motion for Summary Decision at 9-11. The ALJ also addressed this argument and found that the discovery rule should extend the statute of limitations. Initial Decision on Remand at 12, 14, 17-18. Collins argued that Count Five should be dismissed because Collins complied with the Department's request for information. Respondent's Motion for Summary Decision at 19-23; Respondent's Reply Memorandum in Further Support of its Motion for Summary Decision at 11-17. The ALJ addressed this argument and found that Collins did not reply to the Department's request by the deadline. Initial Decision on Remand at 20-21.

The Initial Decision on Remand complied with the directives in the Remand Order and addressed Collins's arguments in his motion for Summary Decision. The Initial Decision on Remand determined that although the conduct in Counts Two through Four took place outside of the ten-year statute of limitations, the discovery rule applied and extended the deadline for the Department to file the OTSC. The ALJ addressed Collins's arguments in his briefs arguing for Summary Decision and determined that they were not persuasive. Further, the ALJ analyzed the evidence in the record and determined that the Department was able to meet its burden of proof that Collins committed the violations in Counts Two through Five of the OTSC.

Constitutionality of the Administrative Process

Collins argues that the New Jersey administrative process, whereby the Commissioner files the Order to Show Cause and the Final Decision, "sidestep[s] the findings of an impartial decision-maker" and is unconstitutional. Collins Exceptions at 22-23.

The "combination of investigative and adjudicative functions does not, without more, constitute a due process violation." Del Tufo v. J.N., 268 N.J. Super. 291, 300, (App. Div. 1993) (quoting Withrow v. Larkin, 421 U.S. 35, 58 (1975)). Rather, a court must determine if "special facts and circumstances [are] present in the case before it that the risk of unfairness is intolerably high." Withrow, 421 U.S. at 58. "[P]roof of actual bias is necessary to overturn administrative actions" when the agency serves in both prosecutorial and adjudicatory capacities. In re Petition for Rev. of Op. No. 583 of Advisory Comm. on Prof'l Ethics, 107 N.J. at 236.

Here, there is no evidence of actual bias against Collins. Although the Commissioner is afforded the power to review the ALJ's findings and recommendations, the final decision must be based only on the record that was established at the OAL. N.J.S.A. 52:14B-10(d). Further, Collins's due process rights were not violated. "The essential components of due process are

notice and an opportunity to be heard. Thus, a party's due process rights are not violated if it is held liable for a judgment arising out of an action in which it participated or had the opportunity to be heard." Mettinger v. Globe Slicing Mach. Co., 153 N.J. 371, 389 (1998). Collins was given notice and an opportunity to be heard.

Collins was afforded due process, and there is no actual evidence of bias against Collins. Further, the findings and conclusions of the Final Order are based on the record that was established at the OAL. Accordingly, the OTSC should not be dismissed.

Statute of Limitations

A ten-year statute of limitations governs this action. N.J.S.A. 2A:14-1.2(a) (unless otherwise provided by statute, "any civil action commenced by the State shall be commenced within ten years next after the cause of action shall have accrued"); Cumberland Cty. Bd. of Chosen Freeholders v. Vitetta Grp., P.C., 431 N.J. Super. 596, 603 (App. Div. 2013) (N.J.S.A. 2A:14-1.2 "is a statute of limitations governing civil actions commenced by the State or its political subdivisions"). Counts Two through Four of the OTSC involve conduct which took place between 2008 and 2010. The OTSC was filed in 2021, more than ten years later. The Department discovered Collins's illegal conduct January 25, 2016, when MetLife advised the Department of Collins's termination for cause. Initial Decision on Remand at 12-13.

The discovery rule "provides that in an appropriate case a cause of action will be held not to accrue until the injured party discovers, or by an exercise of reasonable diligence and intelligence should have discovered that he may have a basis for an actionable claim." Lopez, 62 N.J. at 272. "The discovery rule is essentially a rule of equity" that allows a plaintiff relief from a statute of limitations bar. Id. at 272-73. The discovery rule delays the commencement of the limitations period in appropriate cases. Catena v. Raytheon Co., 447 N.J. Super. 43, 52 (App. Div.

2016). In fraud cases, as here, the discovery rule is justified by the victim's lack of awareness of the fraud, which is the wrongdoer's very object. Id. at 54. The rule thus prevents the defendant from benefiting from his own deceit. Ibid. The linchpin of the discovery rule is the unfairness of barring claims of unknowing parties. Mancuso v. Neckles, 163 N.J. 26, 29 (2000).

The date of discovery is when the fraud was or reasonably should have been discovered. Catena, 447 N.J. Super. at 55. Here, the Department discovered Collins conduct on January 25, 2016, when MetLife advised the Department of Collins's termination for cause. Initial Decision on Remand at 12-13.

I ADOPT the ALJ's determination and find that the allegations in the OTSC are not barred under the statute of limitations because it is appropriate to extend the statute of limitation under the discovery rule. Because of Collins's fraudulent conduct, the Department could not have become aware of Collins's conduct before being contacted by MetLife on January 25, 2016. I find that it is appropriate to apply the discovery rule and begin tolling time for the purposes of the statute of limitation at that point. Accordingly, the Department filed the OTSC within time.

Count One – Accepting business from unlicensed individual

Count One of the OTSC alleges that Collins's sales of annuities to G.K. in August 2008, September 2008, March 2009, and August 2009 were improper because Collins accepted insurance business from his brother, Kevin, who was not then licensed in violation of N.J.S.A. 17:22A-40(a)(2) and (12).

The ALJ did not analyze this count and the Department did not take exception. The ALJ stated that the Department admitted that Kevin was licensed as an insurance producer "at some of

the relevant times" and withdrew "the incorrect allegations"[8] from Count One of the OTSC.[9] Initial Decision on Remand at 13-14.

Accordingly, I make no findings or conclusions as to Count One of the OTSC.

Count Two – Sharing of commissions with an unlicensed individual

Count Two of the OTSC alleges that Collins paid Kevin, an unlicensed insurance producer, a portion of his commissions on his sales of annuities to G.K. as compensation for Kevin's solicitation efforts in violation of N.J.S.A. 17:22A-40(a)(2) and N.J.S.A. 11:17B-2.1(a).

The ALJ found that Collins received a commission on each of the four annuity purchases by G.K., and then paid a portion of those commissions to Kevin in 2008 and 2009. Initial Decision on Remand at 6, 11. This included a commission for G.K.'s purchase of the $150,000 annuity from Sun Life in March 2009, when Kevin was not licensed as an insurance producer. Id. at 6-7. The ALJ concluded that the Department proved that Collins violated N.J.A.C. 11:17B-2.1(a), which prohibits an insurance producer from paying commissions to any unlicensed individual, and N.J.S.A. 17:22A-40(a)(2) which prohibits an insurance producer from violating any insurance laws or regulations. Id. at 19.

I ADOPT the ALJ's factual findings, which are supported by the evidence in the record. Collins and Kevin orally agreed to split commissions on the Sun Life and Reliance annuities sold to G.K. T 72:2-73:22. Pursuant to N.J.A.C. 11:17B-2.1(a), "[n]o insurance producer shall pay any commission to any unlicensed individual or organization for services rendered in this State as

[8] The ALJ did not state which specific allegations were withdrawn by the Department.

[9] The ALJ found that Kevin was a licensed resident insurance producer in the State of New Jersey, whose license was expired between October 31, 2008, through June 25, 2009. Initial Decision on Remand at 4. Kevin was not a licensed insurance producer in March 2009, when Collins was the agent of record for a transaction involving G.K.'s purchase of an annuity from Sun Life in the amount of $150,000.

an insurance producer except for services rendered while licensed." No person may sell, solicit, or negotiate insurance in New Jersey unless the person is licensed for that line of authority. N.J.S.A. 17:22A-29.

Kevin was unlicensed at the time G.K. filled out the Sun Life Index Multipoint Application for the purchase of a $150,000 annuity and associated documents on March 5, 2009. However, the record does not contain any evidence as to whether Kevin actually engaged in any unlicensed activity at the time he was not licensed. The record is unclear as to whether Kevin went over the applications with G.K., answered any questions G.K. might have had, or if Kevin simply gave G.K. the application and G.K. filled it out on his own. Further, the OTSC alleges that Collins paid Kevin for his "solicitation efforts in New Jersey…" The record does not contain any evidence of when these solicitation efforts occurred, and it is unclear if the occurred when Kevin was unlicensed. I find that the Department has failed to meet its burden of proof that Collins paid Kevin for "solicitation efforts" that Kevin rendered while he was unlicensed.

Accordingly, I REJECT the ALJ's determination and find that insufficient evidence exists to find that Collins violated N.J.A.C. 11:17B-2.1(a) (no insurance producer shall pay any commission to any unlicensed individual or organization for services rendered in this State as an insurance producer except for services rendered while licensed) and N.J.S.A. 17:22A-40(a)(2) (violating any insurance law or regulation) as alleged in Count Two of the OTSC.

Count Three – Submitting applications with false and misleading information

Count Three of the OTSC alleges that that on G.K.'s behalf, Collins completed and submitted to Sun Life and Reliance annuity applications which contained false and misleading statements. Specifically, the applications stated that G.K. had executed the applications while in Connecticut, when G.K. executed the applications in New Jersey, and that Collins had maintained

a ten-year business relationship with G.K., when Collins had never met or spoke with G.K. The OTSC alleges that in doing so, Collins violated N.J.S.A. 17:22A-40(a)(2), (7), (8), (16), and N.J.A.C. 11:17A-4.2.

The ALJ found that Collins had never met or personally communicated with G.K. Initial Decision on Remand at 4. Rather, Collins only communicated with Kevin regarding G.K. and G.K.'s purchase of annuities. Id. at 5. The ALJ found that Collins was required to identify and certify to the city and state where the applicant signed the Application Form, Disclosure Form, and Non-Resident Information Form issued by Sun Life; and the Application Form, IRA Disclosure Statement Form and HIPAA Authorization Form issued by Reliance. Id. at 7. On each of these forms, Collins entered West Hartford, CT as the city and state where G.K. purportedly executed the Sun Life and Reliance documents. Ibid. However, this was inaccurate because Collins had never met G.K. and G.K. did not sign the documents in West Hartford, Connecticut. T 131:9-14; 133:7-17; 204:12-24. Accordingly, Collins could not have witnessed G.K. executing the application as required by N.J.A.C. 11:17A-4.2. Id. at 11. The ALJ found that Collins completed and submitted to Sun Life and Reliance multiple insurance forms which Collins knew contained false and misleading information and were not completed in a face-to-face meeting in violation of N.J.S.A. 17:22A-40(a)(2), (7), (8), (16), and N.J.A.C. 11:17A-4.2. Id. at 19-20.

I ADOPT the ALJ's factual findings, which are supported by the evidence in the record. Collins submitted multiple insurance forms that misrepresented his relationship with G.K., or the location where G.K. signed the application forms. G.K. did not sign the application forms in Connecticut with Collins because Collins and G.K. had never met, and G.K. never signed any applications in Collins's presence. Collins was required to witness G.K.'s signature under N.J.A.C. 11:17A-4.2. Further, Collins indicated on several documents that he verified G.K.'s

identity by reviewing G.K.'s driver's license. Silfies Cert. Exs. 4, 8, 11, and 17. Collins could not have verified G.K.'s identity with his driver's license because Collins never met or spoke to G.K. Initial Decision on Remand at 4, 5. Collins also did not disclose to the insurers his brother's involvement and misrepresented that he would be sharing commissions. On each Application Form issued by Sun Life, Collins indicated that he was the "Primary Agent" and did not disclose the involvement of any other agent nor did he disclose any allocation of commissions. Initial Decision at 8, 12. The Application Form issued by Reliance required Collins to stipulate "Yes" or "No" as to whether the transaction involved a "Commission Split," and Collins indicated "No." Id. at 8

Accordingly, I ADOPT the ALJ's determination and find that Collins violated N.J.S.A. 17:22A-40(a)(2) (violating any insurance law or regulation), N.J.S.A. 17:22A-40(a)(7) (committing any insurance unfair trade practice or fraud), N.J.S.A. 17:22A-40(a)(8) (fraudulent coercive or dishonest practices, demonstrating incompetence, unworthiness, or financial irresponsibility), N.J.S.A. 17:22A-40(a)(16) (committing 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) as alleged in Count Three of the OTSC.

Count Four – Transfers of funds without G.K.'s knowledge or authorization

Count Four of the OTSC alleges that on G.K.'s behalf, Collins established several annuity accounts with Sun Life and authorized transfers of funds between said accounts without G.K.'s authorization, knowledge, or consent in violation of N.J.S.A. 17:22A-40(a)(2), (7), (8), (16), and N.J.A.C. 11:17A-4.10.

The ALJ found that Collins spoke with a representative from Sun Life on February 1, 2010, regarding an issue with chargebacks on an annuity sold to G.K. Initial Decision on Remand at 9. Collins considered the withdrawals to be unusual and knew they were contrary to what he was told were G.K.'s investment objectives, but did not contact G.K. to alert him that these cash withdrawals had been made from his annuity account. Ibid. Collins directed Sun Life to reverse the debits for cash withdrawals made on one annuity account and apply those same cash withdrawals to a different annuity account, without G.K.'s knowledge or consent, to ensure that Collins would retain his full commission. Id. at 9-10, 12. The ALJ found that Collins violated N.J.S.A. 17:22A-40(a)(2), (7), (8), (16), and N.J.A.C. 11:17A-4.10. Id. at 20.

I ADOPT the ALJ's factual findings, which are supported by the evidence in the record. Collins became aware that money was being withdrawn from an annuity account, subjecting G.K. to a surrender charge and Collins to a chargeback. Collins had Sun Life reverse the withdrawal on one account and apply it to a different account instead. Collins did not tell G.K. that he had reversed the withdrawal and applied it to a different account. Collins did not explain to G.K. that the withdrawal was contrary to his stated investment objectives and instead assumed that his brother, Kevin, would do so, even though it was Collins's understanding that G.K. knew that Collins was acting as his insurance agent.

Accordingly, I ADOPT the ALJ's determination and find that Collins violated N.J.S.A. 17:22A-40(a)(2) (violating any insurance law or regulation), N.J.S.A. 17:22A-40(a)(7) (committing any insurance unfair trade practice or fraud), N.J.S.A. 17:22A-40(a)(8) (fraudulent coercive or dishonest practices, demonstrating incompetence, unworthiness, or financial irresponsibility), N.J.S.A. 17:22A-40(a)(16) (committing any fraudulent act), and N.J.A.C. 11:17A-4.10 (failing to act as a fiduciary) as alleged in Count Four of the OTSC.

Count Five – Failure to respond to Department's inquiries

Count Five of the OTSC alleges that letter by dated March 23, 2016, the Department requested that Collins provide information and produce documents in connection with all annuity transactions completed on behalf of G.K on or before April 8, 2016, and that Collins failed to respond or produce any of the requested documents or information by the deadline, in violation of N.J.S.A. 17:22A-40(a)(2) and N.J.A.C. 11:17A-4.8.

The ALJ found that the Department sent two written requests for information to Collins, one on March 23, 2016, and one on April 27, 2016. Initial Decision on Remand at 10, 20. Collins did not respond to either request. Ibid. On June 14, 2016, the Department e-mailed Collins and demanded a response to its initial request for information. Ibid. On June 20, 2016, Collins's attorney replied and requested additional time to provide a response. Id. at 10, 20-21. The ALJ concluded that by failing to respond to the Department's inquiries by the deadline, Collins violated N.J.A.C. 11:17A-4.8 and N.J.S.A. 17:22A-40(a)(2). Id. at 21.

I ADOPT the ALJ's factual findings, which are supported by the evidence in the record. Collins received inquiries from the Department and did not respond within 15 days of the regulatory deadline.

Accordingly, I ADOPT the ALJ's determination and find that Collins violated N.J.S.A. 17:22A-40(a)(2) (violating any insurance law or regulation) and 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) as alleged in Count Five of the OTSC.

PENALTY AGAINST COLLINS

Revocation of Collins's Insurance Producer License

The ALJ concluded that Collins's insurance producer license should be revoked. Initial Decision on Remand at 24. I find that the record is more than sufficient to support license revocation and compels the revocation of Collins's license. Accordingly, I ADOPT the ALJ's recommendation that Collins'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). 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.

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);

Commissioner v. Brown, OAL Dkt No. BKI 05907-20, Initial Decision (11/22/24) Final Decision and Order (02/19/25).

I find that revocation of Collins's insurance producer license is warranted. In his Exceptions, Collins argued that the Department has only revoked insurance producer licenses when doing so is necessary to protect the public. Collins Exceptions at 19. I find that this is the case here. Collins submitted four annuity applications without ever speaking directly with G.K. On several of the application forms of Sun Life and Reliance, Collins entered West Hartford, CT as the city and state where G.K. purportedly executed the documents. However, G.K. did not sign the documents in West Hartford, Connecticut. On several documents, Collins also certified that he reviewed G.K.'s driver's license to identify G.K. However, Collins had never met G.K., nor spoken to him directly and could not have verified G.K.'s identity with G.K.'s license. Rather, Collins depended on his brother, Kevin, to act as an intermediary between Collins and G.K. Yet, it was Collins's understanding that G.K. viewed Collins as his insurance agent. Collins also indicated to both Sun Life and Reliance that he was the only agent involved and he would not be splitting his commission. License revocation has 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). License revocation has also been imposed on insurance producers who did not witness the signature of the prospective insured, and did not have a face to face meeting with the prospective insured. Commissioner v. Kumar, OAL Dkt. BKI-0040-19, Initial Decision (11/19/21), Final Decision and Order (03/30/22), aff'd No. 2627-21, (App. Div. Dec. 29, 2023).

Further, Collins authorized Sun Life to reverse cash withdrawals made on one annuity account and apply those same cash withdrawals to a different annuity account, without G.K.'s knowledge or consent. Collins did not explain to G.K. that he was subject to a surrender charge or that the withdrawals were contrary to his investment objectives. Instead, he assumed that his brother, Kevin, would do so. Accordingly, I find that revocation of Collins's insurance producer license is appropriate.

Monetary Penalties

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 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 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.

The first Kimmelman factor addresses the good faith or bad faith of the violator. The Court should assess how egregious the respondent's conduct was and whether he could have reasonably believed his conduct was legal. Kimmelman, 108 N.J. at 137. The ALJ found that Collins acted in bad faith and this factor weighed in favor of a higher penalty. Initial Decision on Remand at 22. Collins argued that he did not intentionally engage in wrongdoing, and complied with all the Department's requests for information. Collins Exceptions at 20. The Department argued that Collins's conduct, not his intent, is the determinative factor. Department Reply at 10 (citing

Kimmelman, 108 N.J. at 137). I find that Collins acted in bad faith in submitting annuity applications and documents with false information. Collins was aware that he did not have a relationship with G.K. and that Collins did not witness G.K.'s signature. He also could not have verified G.K.'s identity with his driver's license. Further, Collins reversed withdrawals from G.K.'s account and did not explain to G.K. that he had done so, or that the withdrawals were against G.K.'s investment goals. I find that this factor weighs in favor of a higher penalty.

The second Kimmelman factor is the ability of the respondent to pay the penalties imposed. The ALJ found that this factor is neutral because Collins did not provide any evidence of his ability or inability to pay. Initial Decision on Remand at 22. Collins argued that the second factor, the ability to pay, does not warrant discussion because he has financial means. Collins Exceptions at 20. I find this factor therefore weighs in favor of a higher 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 Collins received $100,655.91 in commissions from the four annuities purchased on behalf of G.K and the third factor weighed in favor of a higher penalty. Initial Decision on Remand at 22. Collins argued that he earned $19,714.72 in gross pre-tax commissions from the sale of the four annuities to G.K., which is "significantly less" than the penalties the Department seeks. Collins Exceptions at 20. The Department argues that it is irrelevant that Collins kept only $19,714.72 of the over $100,000 he earned because he shared his commissions with Kevin. Department Reply at 11. I find that Collins earned $100,655.91 in commissions. Even though he shared $80,941.19 with Kevin and only retained $19,714.72, that does not mean that he actually earned less. Accordingly, I find that this factor weighs in favor of a higher penalty.

The fourth Kimmelman factor addresses the injury to the public. While injury to the public may sometimes be equivalent to the profits obtained by the respondent through his illegal conduct, less tangible forms of harm can also be considered. Kimmelman, 108 N.J. at 138. The ALJ found that Collins's actions negatively impacted consumer confidence in the industry. Initial Decision on Remand at 22-23. The ALJ concluded that this factor weighed in favor of a higher penalty. Id. 23. Collins argued that only one customer was injured, G.K., who has been made whole by a civil case G.K. filed against Collins, Kevin, MetLife, and other defendants. Collins Exceptions at 20. Collins argued that he has not engaged in fraudulent conduct, and complied with the Department's investigation. Ibid. The Department argued that the annuity companies were also victimized and placed at financial risk because of Collins's misrepresentations about the material facts regarding G.K.'s four annuity purchases. Department Reply at 11. As stated above, 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, OAL Dkt. No. BKI 11979-10, Initial Decision (08/15/11), Final Decision and Order (12/28/11). I find that Collins ignored his fiduciary duty to G.K., never met with G.K., reversed a withdrawal, and never explained to G.K. why he did so. Further, Collins's conduct harmed the public because he engaged in unscrupulous activity which reflects negatively on the insurance industry and erodes consumer confidence. Accordingly, I find that this factor weighs in favor of a higher 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 this factor weighed in favor of a higher penalty. Initial Decision on Remand at 23. Collins and the Department agreed that the conduct lasted for one year, from August 2008 to August 2009. Collins Exceptions at 21; Department Reply at 12. I, like the ALJ, find that this factor weighs in favor of a higher penalty.

The sixth factor contemplated in Kimmelman is the existence of criminal actions and whether a civil penalty may be unduly punitive if other sanctions have been imposed. A large civil penalty may be unduly punitive if other sanctions have been imposed for the same violation Kimmelman, 108 N.J. at 139. The ALJ found that there were no criminal or treble damage actions, and this factor was neutral. Initial Decision on Remand at 23. Collins argued that the ALJ neglected to consider that he was fired, settled with G.K. in a civil suit, and has spent money on attorneys' fees to defend himself. Collins Exceptions at 21. Collins argued that it would be unjust and unduly punitive to punish him any further for his brother's actions. Ibid. The Department argued that Collins had not been criminally prosecuted for his conduct and therefore a civil penalty in the amount of $35,000 is not unduly punitive, particularly when Collins has the means to pay it. Department Reply at 12. I find that Collins has not been the subject of a criminal prosecution or treble damages and a high penalty would not be unduly punitive.

The final factor examined in Kimmelman is previous relevant regulatory and statutory violations of the respondent, and if past penalties have been insufficient to deter future violations. Kimmelman, 108 N.J. at 139. The ALJ found that Collins has no history of any prior discipline with the Department and that this factor weighed in favor of a lower penalty. Initial Decision on Remand at 23. The parties agree that this factor weighs in favor of a lower penalty. Collins Exceptions at 21-22; Department Reply at 12.

Weighing all of the Kimmelman factors, and based upon the violations of the Producer Act as set forth above, I MODIFY the ALJ's recommendation that Collins be fined $35,000 and order Collins to pay $22,500 in civil monetary penalties to be allocated as follows:

Count Three: $2,500 per each annuity application submitted with false and misleading information,[10] for a total of $10,000, in violation of N.J.S.A. 17:22A-40(a)(2), (7), (8), (16), and N.J.A.C. 11:17A-4.2;

Count Four: $10,000 for authorizing a transfer of funds between G.K.'s accounts without G.K.'s authorization, knowledge, or consent in violation of N.J.S.A. 17:22A-40(a)(2), (7), (8), (16), and N.J.A.C. 11:17A-4.10; and

Count Five: $2,500 for failing to respond or produce the requested documents or information by the deadline, in violation of N.J.S.A. 17:22A-40(a)(2) and N.J.A.C. 11:17A-4.8.

These penalties are necessary and appropriate under the above Kimmelman analysis, demonstrate the appropriate level of opprobrium for such misconduct, and will serve to deter future misconduct by the industry as a whole. Collins submitted annuity application forms and supporting documents with inaccurate and misleading information. He never spoke to G.K., his client, even though he understood that G.K. believed that Collins was acting as his insurance agent. He also authorized a transfer between G.K.'s accounts without G.K.'s knowledge or consent, and never explained to G.K. that withdrawing funds was contrary to G.K.'s investment objectives as represented to Collins by Kevin.

[10] Each misrepresentation on each application constitutes a separate violation of the Producer Act. Merin v. Maglaki, 126 N.J. 430, 437 (1992). The Department could have sought up to $10,000 per misrepresentation on the applications and related materials, constituting approximately $150,000 in fines as to only Count Three.

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. However, the Commissioner is not bound by the order in which the allegations were pled with regard to the imposition of monetary penalties. Commissioner v. Kwasnik, OAL Dkt. No. BKI 10910-16, Initial Decision (02/05/18), Final Decision and Order (05/01/18). Counts Three and Four involve more egregious conduct than Count Five, and thus are given higher penalties. Further, a fine of $2,500 for failing to respond to the Department's inquiries by a required deadline is consistent with prior Department enforcement actions. See Commissioner v. Ciuia and Fox Bail Bonds LLC, Final Order (02/01/21) ($2,500 for failing to respond to Department's inquiries); Commissioner v. AJS Bail Bonds, LLC, and Bashner, Final Order (04/20/17) ($1,000 fine for failing to respond to a Department subpoena).

Pursuant to N.J.S.A. 17:22A-45(c), it is also appropriate to impose reimbursement of the costs of investigation. The ALJ also recommended that Collins reimburse the Department $550 for the costs of investigation and prosecution. Initial Decision on Remand at 24. I ADOPT the ALJ's determination and find that the Collins is liable for the costs of investigation and prosecution in the amount of $550, which is consistent with the amount set forth by the Department Investigator. Silfies Cert. ¶ 27, Ex. 22 attached thereto.

CONCLUSION

Having reviewed the Initial Decision on Remand, Collins's exceptions and the Department's reply, and the record, I hereby ADOPT the Findings and Conclusions as set forth in the Initial Decision on Remand, except as modified herein. I ADOPT the conclusion that the Department's Motion for Summary Decision should be granted on Counts Three through Five as charged in the OTSC. Specifically, as to Count Two, I REJECT the ALJ's conclusions and hold

that the Department did not prove that the Collins violated N.J.S.A. 17:22A-40(a)(2) and N.J.S.A. 11:17B-2.1(a). As to Count Three, I ADOPT the ALJ's conclusions and hold that the Department proved that that Collins violated N.J.S.A. 17:22A-40(a)(2), (7), (8), (16), and N.J.A.C. 11:17A-4.2. As to Count Four, I ADOPT the ALJ's conclusions and hold that the Department proved that Collins violated N.J.S.A. 17:22A-40(a)(2), (7), (8), (16), and N.J.A.C. 11:17A-4.10. As to Count Five, I ADOPT the ALJ's conclusions and hold that the Department proved that Collins violated N.J.S.A. 17:22A-40(a)(2) and N.J.A.C. 11:17A-4.8. I MODIFY the recommended civil monetary penalty and ORDER that Collins is responsible for a monetary penalty in the amount of $22,500. I also MODIFY as to allocation. Further, I ADOPT the recommended imposition of the costs of investigation and prosecution for violations of the Producer Act and ORDER that Collins pay $550.

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

It is so ORDERED on this 5th day of June 2025.

Justin Zimmerman
Commissioner

Jd Collins FO/Final Orders/Insurance