ORDER NO.: E26-03

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DOCKET NO.: BKI-06261-19
AGENCY DOCKET NO.: OTSC #E19-32
APPELLATE DOCKET NO.: A3644-21

JUSTIN ZIMMERMAN,[1] COMMISSIONER, NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE,	)	
Petitioner,	)	
v.	)	ORDER ON REMAND VACATING FINAL ORDER NO. E22-50
DIVERSIFIED PUBLIC ADJUSTERS LLC, AND JOSEPH VULPIS,	)	
Respondents.	)	

This matter comes before the Commissioner of Banking and Insurance ("Commissioner") pursuant to the September 26, 2023 opinion of the Superior Court of New Jersey, Appellate Division, No. A-3644-21 (App. Div. Sep. 26, 2023) remanding the matter to reassess and recalculate the monetary penalties that were ordered in Order No. E22-50 issued on June 20, 2022 ("Final Order").

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

Statement of the Case and Procedural History

On March 25, 2019, the Department of Banking and Insurance ("Department") issued Order to Show Cause No. E19-32 ("OTSC") against Diversified Public Adjusters LLC ("Diversified") and Joseph Vulpis ("Vulpis") (collectively, "Respondents"), which sought to revoke the Respondents' public adjuster licenses and impose civil monetary penalties and investigative costs for the alleged violations of the New Jersey Public Adjusters' Licensing Act, N.J.S.A. 17:22B-1 to -20, ("Public Adjusters' Act").

In the OTSC, the Department alleges that the Respondents engaged in the following activities in violation of the insurance laws of this State:

> Count One: Between December 26, 2017 and October 19, 2018, the Respondents entered into at least seven contracts for public adjuster services that failed to include: (i) the procedures to be followed by the insured if he or she seeks to cancel the contract, including any requirement for a written notice; (ii) the rights and obligations of the parties if he contract is cancelled at any time; and (iii) the costs to the insured or the formula for the calculation of costs to the insured for services rendered in whole or in part, in violation of N.J.A.C. 11:1-37.13(b)(5)(i) to (iii); N.J.S.A. 17:22B-14(a)(1) and 14(a)(4); and N.J.A.C. 11:1-37.14(a)(1) and 37.14(a)(4).

On April 9, 2019, the Respondents filed an Answer to the OTSC, wherein the Respondents denied the allegations set forth in the OTSC and requested a hearing. The Department transmitted the matter as a contested case to the Office of Administrative Law ("OAL") pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23, where it was filed on May 6, 2019.

The parties filed cross-motions for summary decision. On December 14, 2020, the ALJ issued an Order granting partial summary decision in favor of the Department as it relates to liability for violations alleged in Count One of the OTSC. In addition, the ALJ recommended that the Respondents reimburse costs to the State for the agency's investigation, in the amount of

$1,025. However, the ALJ denied both parties' motions on the issue of the appropriate monetary penalty, as genuine issues of material facts remained and ordered a hearing.

On January 10, 2022, the ALJ issued the Initial Decision. The Initial Decision incorporated the findings set forth in the PSD, including finding for the Department as it relates to liability for the violations alleged in Count One of the OTSC and reimbursement of investigative costs to the State. In addition, based on consideration of the factors enumerated in Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987) the ALJ recommended a civil penalty totaling $6,000.

In the Final Order, the Commissioner adopted the grant of Summary Decision to the Department. As to Count One, the Commissioner found that the contracts violated N.J.A.C. 11:1-37.13(b)(5)(i) (providing that a contract between a licensed public adjuster and an insured must prominently include the procedures to be followed by the insured to cancel the contract, including any written notice), N.J.A.C. 11:1-37.13(b)(5)(ii) (a written contract or memorandum between the public adjuster and an insured shall set forth the rights and obligations of the parties if the contract is cancelled at any time), and N.J.A.C. 11:1-37.13(b)(5)(iii) (providing that a contract between a licensed public adjuster and an insured must include the costs to the insured or the formula to calculate costs to the insured for services rendered). The Final Order also modified the initial decision to include violations of N.J.S.A. 17:22B-14(a)(1) and N.J.A.C. 11:1-37.14(a)(1) (violating any provision of insurance laws, including any rules promulgated thereunder); and N.J.S.A. 17:22B-14(a)(4) and N.J.A.C. 11:1-37.14(a)(4) (conduct demonstrating incompetency).

The Commissioner also adopted the ALJ's recommendation as to the fine of $1,000 per contract, but modified to find that a seventh contract, that had been canceled, should also be included because that contract also failed to set forth the required language and was therefore deficient. The Commissioner further adopted the ALJ's recommendation that the Respondents

additionally be required to reimburse the Department for its costs of investigation in the amount of $1,025 pursuant to N.J.S.A. 17:22B-17.

The Respondents appealed to the Appellate Division arguing that N.J.A.C. 11:1-37.13(b)(5)(i), (ii), and (iii) are ultra vires and violate due process because the Legislature never intended to mandate that public adjuster contracts be cancelable at any time. They argued that the Commissioner should be estopped from finding any violation of these regulations because the Department failed to promulgate form contracts as required by the Public Adjusters' Act.

The Appellate Division found that N.J.A.C. 11:1-37.13(b)(5)(i) and (ii) requires public adjuster contracts to set forth the procedures which are to be followed in the event of a cancellation and advise the consumer of their rights in the event of cancellation, respectively. Zimmerman v. Diviney, 477 N.J. Super. 1, 17 (App. Div. 2023). The regulations do not codify a right of the consumer to cancel a contract with a public adjuster at any time. Id. at 19. The Appellate Division found that the Commissioner misinterpreted N.J.A.C. 11:1-37.13(b)(5)(i) when she concluded that regulation contemplates the ability to cancel a contract with a public adjuster at any time. Id. at 20. Accordingly, the Appellate Division reversed the findings that the Respondents' contracts violated N.J.A.C. 11:1-37.13(b)(5)(i). Ibid.

The Respondents also argued that the penalties and costs imposed were arbitrary and capricious. Although the Appellate Division declined "to second-guess the fines and penalties justifiably imposed", because the findings related to N.J.A.C. 11:1-37.13(b)(5)(i) were reversed, the Appellate Division remanded to reassess the Kimmelman factors and recalculate the resulting costs and penalties imposed on the Respondents. Id. at 26-27.

The Department requested that the matter be dismissed in its entirety. Accordingly, the Final Order, including the amount of monetary penalties and costs, is vacated.

CONCLUSION

The matter is dismissed and the monetary penalties and costs that were ordered in Order No. E22-50 are vacated.

It is so ORDERED on this 16th day of January 2026.

Justin Zimmerman
Commissioner

jd Diversified Vulpis FO on remand/ Final Orders-Insurance