ORDER NO. E26- 72

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of Banking and Insurance, State of New Jersey, to fine, suspend and/or revoke the insurance producer license of Theodore E. Tracey, Reference No. 100243.	))))))	**FINAL ORDER**

TO: Theodore E. Tracey
21 Main Street, Suite 349
Hackensack, New Jersey 07601

This matter, having been opened by the Commissioner of Banking and Insurance ("Commissioner"), State of New Jersey, upon issuance of Order to Show Cause E26-20 (the "OTSC") alleging that Theodore E. Tracey ("Respondent"), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Respondent is licensed as a resident individual insurance producer in the State of New Jersey, pursuant to N.J.S.A. 17:22A-32(a); and

WHEREAS, Respondent is subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48 ("Producer Act"); and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(2), an insurance producer shall not violate any insurance law, regulation, subpoena or order of the Commissioner or of another state's insurance regulator; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(4), an insurance producer shall not improperly withhold, misappropriate or convert any monies or properties received in the course of doing insurance business; and

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

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

WHEREAS, pursuant to N.J.A.C. 11:17A-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 of the inquiry was made or mailed where no response time is given; and

WHEREAS, pursuant to N.J.A.C. 11:17A-4.10, an insurance producer acts in a fiduciary capacity in the conduct of his or her insurance business; and

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

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a), the Commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with N.J.S.A. 17:22A-45(c), or any combination of actions for violations of the Producer Act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45(c), any person violating the Producer Act is subject to a penalty not exceeding $5,000.00 for the first offense and not exceeding $10,000.00 for

each subsequent offense; additionally, the Commissioner may order restitution of moneys owed any person and reimbursement of costs of the investigation and prosecution; and

WHEREAS, on January 20, 2006, the Commissioner issued the OTSC, alleging that Respondent violated various New Jersey insurance laws by as set forth in the following:

ALLEGATIONS COMMON TO ALL COUNTS

IT APPEARING, that starting May 18, 2001, Respondent became a licensed insurance producer in the State of New Jersey; and

IT FURTHER APPEARING, that on or around January 2015, Respondent recommended to his client, "M.B.," that she diversify her annuity policy by investing additional funds with him, so that she could "make more money"; and

IT FURTHER APPEARING, that on or about January 18 2015, M.B. requested a disbursement from her Allianz Life policy in the amount of $15,000.00; and

IT FURTHER APPEARING, that on January 27, 2015, Allianz issued a disbursement check in the amount of $15,000.00 to M.B., which she deposited into her personal PNC checking account on or about February 3, 2015; and

IT FURTHER APPEARING, that M.B. provided a personal check in the amount of $15,000.00 to Respondent; and

IT FURTHER APPEARING, that Respondent cashed M.B.'s check on or about February 3, 2015; and

IT FURTHER APPEARING, that Respondent did not use M.B.'s premium funds to purchase another annuity or otherwise invest them for her benefit; and

IT FURTHER APPEARING, that Respondent did not return or refund M.B.'s premium funds to her; and

IT FURTHER APPEARING, that M.B. reported this incident to the Department of Banking and Insurance on or about November 2020; and

IT FURTHER APPEARING, that Respondent subsequently

failed to respond to the Department's inquiry into the incident dated September 16, 2021; and

COUNT ONE

IT FURTHER APPEARING, that by collecting premium funds from a policyholder and misappropriating those insurance funds, Respondent violated N.J.S.A. 17:22A-40(a)(2), (4), (8) and (16), N.J.A.C. 11:17A-4.10, and N.J.A.C. 11:17C-2.1(a); and

COUNT TWO

IT FURTHER APPEARING, that Respondent failed to timely respond to the Department's inquiry, or otherwise cooperate with the Department's investigation, in violation of N.J.S.A. 17:22A-40(a)(2) and (8) and N.J.A.C. 11:17A-4.8; and

IT FURTHER APPEARING that Respondent was given notice of the aforesaid charges and an opportunity to contest the charges at a hearing pursuant to the OTSC; and

IT FURTHER APPEARING that as set forth in the Certification of Chandra M. Arkema, attached as Exhibit A, on January 21, 2026, the OTSC was served upon Respondent by regular and certified mail, return receipt requested; and

IT FURTHER APPEARING that mailed service of the OTSC upon Respondent constitutes lawful service, pursuant to N.J.A.C. 11:17D-2.1(a)(3); and

IT FURTHER APPEARING that Respondent failed to provide written responses to the charges contained in the OTSC within 20 days as provided by N.J.A.C. 11:17D-2.1(d)(1), and therefore has waived his rights to a hearing to contest these charges and the charges deemed admitted, pursuant to N.J.A.C. 11:17D-2.1(b)(1); and

IT FURTHER APPEARING, that in Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123, 137-139 (1987), the Supreme Court established seven (7) factors to be considered in determining the imposition of civil fines in administrative proceedings ("Kimmelman Factors"); and

IT FURTHER APPEARING, that the seven Kimmelman Factors are as follows: (1) the

good or bad faith of the defendant; (2) defendant's ability to pay a civil fine; (3) the amount of the profits obtained from the illegal activity; (4) the injury to the public; (5) the duration of the misconduct; (6) the existence of criminal or treble damages actions; and (7) the past violations of the defendant; and

WHEREAS, the Commissioner has reviewed the Kimmelman Factors, and finds that Respondent showed bad faith by collecting premium funds from a policyholder and then misappropriating those insurance funds and then refused to respond to the Department's inquiries or otherwise cooperate with its investigation. For his illegal activity, Respondent profited in the amount of $15,000.00, which he never repaid. He provided no evidence of inability to pay a civil penalty.

NOW, THEREFORE, IT IS on this 22nd day of May 2026,

ORDERED, that the charges contained in the OTSC are deemed admitted by Respondent due to his failure to respond to the charges, pursuant to N.J.A.C. 11:17D-2.1(b)(1); and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-40, and N.J.A.C. 11:17D-2.1(b)(2), the insurance producer license of Respondent is **REVOKED** effective upon the execution of this Final Order; and

IT IS FURTHER ORDERED, that based upon the Kimmelman Factors, Respondent shall be responsible for the payment totaling $10,000.00 in civil penalties for violations of the Producer Act and other insurance laws cited above as follows:

Respondent shall be responsible for the payment of civil penalties to the Division of Insurance Enforcement totaling $5,000.00 for the Producer Act violations as described in Count 1 of the Order to Show Cause; and

Respondent shall be responsible for the payment of civil penalties to the Division of Insurance Enforcement totaling $5,000.00 for the Producer Act violation as described in Count 2 of the Order to Show Cause; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45c and N.J.A.C. 11:1-32.4(b)20, Respondent shall reimburse the Department of Banking and Insurance, Division of Insurance Enforcement and Bureau of Fraud Deterrence, for the costs associated with the investigation and prosecution of this matter, as evidenced by the Certification of Costs by Investigator Gervasio (attached as Exhibit B), totaling $837.50. The Commissioner has reviewed the investigative costs application and finds the amount of time to be reasonable; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c), Respondent shall pay restitution in the amount of $15,000.00 directly to Mary Batten; and

IT IS FURTHER ORDERED, that Respondent shall pay the above fines and costs totaling $10,837.50 by remitting full payment to the Commissioner of Banking and Insurance, State of New Jersey, 20 West State Street, P.O. Box 329, Trenton, New Jersey 08625, Attention: Matthew Gervasio, Supervisor of Investigations, by certified check, cashier's check or money order made payable to the "State of New Jersey, General Treasury," within ten (10) days from the date of service of this Order; and

IT IS FURTHER ORDERED, that in the event full payment of the fines and costs is not made, the Commissioner may exercise any and all remedies available by law, including but not limited to recovery of any unpaid penalties, in accordance with the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 to -12; and

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

public health, safety and welfare, and are not intended to constitute debts which may be limited or discharged in a bankruptcy proceeding; and

IT IS FURTHER ORDERED, that the provisions of this Final Order represent a final agency decision and constitute a final resolution of the allegations contained in the OTSC.

Susan Ochs
Acting Commissioner