

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DKT. NO.: BKI 07924-13
AGENCY DKT. NO.: E13-26

KENNETH E. KOBYSLOWSKI,)
COMMISSIONER, NEW JERSEY)
DEPARTMENT OF BANKING AND)
INSURANCE,)
)
Petitioner)
)
v.)
)
AQUILES F. NOVILLO AND)
ALL BUSINESS INSURANCE)
MANAGERS, INC.,)
)
Respondents.)

FINAL DECISION AND ORDER

This matter comes before the Commissioner of Banking and Insurance (“the Commissioner”) pursuant to the authority of N.J.S.A. 52:14B-1, N.J.S.A. 17:1-15, and the New Jersey Insurance Producer Licensing Act of 2001 (N.J.S.A. 17:22A-26, et seq.), (“the Act”) and all powers expressed or implied therein, for the purpose of reviewing the Initial Decision of Administrative Law Judge Michael Antoniewicz, (“the ALJ”) issued on April 11, 2014, (“the Initial Decision”). In the Initial Decision the ALJ ordered Aquiles F. Novillo and All Business Insurance Managers, Inc. (hereinafter “the Respondents” or “Novillo” or “All Business”) to pay civil penalties in the form of fines totaling \$330,000 for the proven offenses alleged in Counts 1 through 6 of Order to Show Cause No. E13-26 (“the OTSC”). The ALJ also ordered the Respondents to pay investigative costs of \$1,800, for a total civil monetary penalty assessed upon

the Respondents, jointly and severally, of \$331,800. The ALJ further ordered the revocation of the Respondents' insurance producer licenses issued by the Department of Banking and Insurance ("the Department" or "Petitioner").

PROCEDURAL HISTORY

The Commissioner issued the five count OTSC on March 20, 2013 seeking to revoke the insurance producer licenses of the Respondents and impose monetary fines and assess costs incurred by the Department in the investigation and prosecution of this matter. The OTSC alleged that the Respondents violated N.J.S.A. 17:22A-40a(2), (6), (7), (8), (15), (16), (17), and (18); N.J.S.A. 17:22A-40c; and N.J.S.A. 17:22A-47b.

Pursuant to N.J.S.A. 17:22A-45c., the OTSC sought the maximum penalties for multiple violations of the Act in the amounts of \$5,000 for the first offense and \$10,000 for each subsequent violation.

Respondents filed an answer denying and contesting the allegations contained in the OTSC and requested a hearing. The matter was transferred to the Office of Administrative Law ("the OAL") on June 10, 2013. A hearing commenced on December 9, 2013 and was concluded on the same date. Respondent All Business did not participate in the hearing and therefore failed to appear. Written closing arguments were received from the Department and Novillo on February 28, 2014.

The Department's written closing argument averred that the Department had presented sufficient proof at the hearing to justify the amendment of the OTSC to include Respondents' production of 27 fraudulent certificates of insurance as additional violations of the Act, to be referenced in the amended OTSC E13-26 as Count 6. The Department noted that pursuant to N.J.A.C. 1:1-6.2: "unless precluded by law or constitutional principle, pleadings may be freely

amended when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice." The Department noted that it is well recognized that first pleadings in the OAL may be amended anytime, even after presentation of proofs. Roberts v. Keansburg Bd. of Ed., 5 N.J.A.R. 180, 250 (1983), and Commissioner v. McCoy, 96 N.J.A.R.2d (INS) (1995) (Supplemental Decision 7/18/96). No response was submitted by Novillo to the request to so amend the OTSC. The record was closed on February 28, 2014.

On May 23, 2014 an order was entered extending the time for the issuance of a final decision by the Commissioner to July 11, 2014.

STATEMENT OF THE CASE

Novillo is a forty-six year old former Ecuadorean who has been in the United States since he was three years old. During the time period here in issue, Novillo was the Designated Licensed Responsible Producer ("the DLRP") of All Business. Novillo purchased All Business, located in the Town of Dover, New Jersey ("Dover") in 1998. During this time period three employees of All Business were also licensed as producers, including Novillo's wife, Jennifer. Novillo testified that he received mostly walk-in or referral insurance business, including commercial taxi cab coverage applications. As of the date of the OAL hearing All Business was closed. Its insurance producer license had expired on May 5, 2013. Novillo testified that his main job at All Business was accounting and reviewing and paying statements on Amsoft agent software.

In May of 2004, Dover implemented a new ordinance requiring each taxicab doing business in the town to be covered by a \$500,000 combined single limit liability insurance policy, with proof of coverage filed with the town clerk. In April, 2006, an investigation was

launched by Dover utilizing the services of CSI Tech. Group, (“CSI”), a private law enforcement support firm, to determine if proofs of coverage of taxicabs issued by the Respondents and filed with the Dover town clerk were valid. Peter Ugalde, (“Ugalde” or “the investigator”), a consultant with CSI and former Dover police officer, requested copies of the documents filed with the town clerk’s office by taxicab companies in order to verify the insurance policies and coverage limits for each taxicab. The documents held by the town clerk were submitted by the individual taxicab companies. They listed their vehicles’ proof of insurance at the required \$500,000.00 combined single limit coverage amount.

The investigator contacted American Millennium Insurance Company (“American Millennium”) and the New Jersey Motor Vehicle Commission (“the MVC”) to verify the coverage limits per vehicle on the insurance policies that had been placed by the Respondents. The investigator determined that the \$500,000 coverage limit amounts indicated on the certificates of insurance coverage issued by All Business and provided to Dover were incorrect and that the actual coverage limits, as reflected on the certificates of insurance coverage on file with American Millennium and the MVC, were \$50,000 per vehicle. (Exhibits P-1-A, -B, -C, -D, -E, -F, -G.), (P-6, P-7, P-8).

The investigator conducted interviews with some of the owners of the taxicab companies (“the owners”) who were licensed in Dover with the utilization of a Spanish translator. The interviews were transcribed. (Exhibits P-13, P-14, P-15, P-16, P-17). These interviews established that Novillo was approached by the owners seeking the \$500,000 in insurance coverage required by Dover and that Novillo had informed them that “he would take care of it.” The owners indicated that in order to purchase coverage from the Respondents, they received “two stacks” of documents for signature containing two different coverage limits certificates, one

stack with coverage limits of \$50,000 from American Millennium for presentation to the MVC, and a second stack with coverage limits of \$500,000 to be produced to Dover.

The investigator also interviewed All Business employees who confirmed the established business practice of “two stacks” of coverage documents for their Dover taxicab company clients; one for the MVC and one for Dover. The employees also described Novillo’s “tight ship” management style and further indicated to the investigator that every transaction that was processed through the All Business office would be reviewed and authorized by Novillo.

In 2006, the findings of the investigator were referred to the Dover Police Department which forwarded the matter to the Morris County Prosecutor’s Office. Novillo and All Business were indicted on December 5, 2007 and again on January 26, 2010. (P-18, P-19). Subsequently, Novillo failed to notify the Department of the filing of the indictments against him within 30 days. As its DLRP, Novillo also failed to report to the Department within 30 days the 2007 and 2010 indictments against All Business, as well as the September 6, 2011 judgment of conviction entered against it.

Novillo renewed his insurance producer license with the Department on or about April 1, 2009 and again on April 1, 2011. On both occasions Novillo completed the required renewal application for himself and for All Business. The applications included a question that asked whether, since the last renewal or since the initial issuance of the license the applicant had been charged with or convicted of a crime and whether there are any criminal charges pending against the applicant. On each application Novillo answered “no” to that question. On July 6, 2011 All Business plead guilty to, and on September 6, 2011, it was convicted in the Superior Court of New Jersey on 28 counts of tampering with public records, in violation of N.J.S.A. 2C:28-7A(1). On December 5, 2013, Novillo once again renewed his producer license and failed to disclose his

2010 indictment and the entry of a July 6, 2011 order admitting him into the Morris County Pre-Trial Intervention (“PTI”) program.

VIOLATIONS ALLEGED IN THE OTSC

Count 1 of the OTSC alleged that on December 5, 2007, Respondents were criminally charged in a 24 count indictment (“the 2007 indictment”) with Insurance Fraud in the 3rd Degree and Tampering with Records in the 3rd Degree. The 2007 indictment alleged that the Respondents repeatedly made false statements in support of multiple insurance applications in 2005 and 2006. The OTSC alleged the Respondents failed to notify the Department of the 2007 indictment within 30 days in violation of N.J.S.A. 17:22A-40a(2), (8), (18) and N.J.S.A. 17:22A-47b.

Count 2 alleged that on January 26, 2010, Respondents were criminally charged with various crimes in an eighty-three (83) count indictment, (“the 2010 indictment”) which alleged that Respondents altered and falsified insurance documents for various companies including taxi companies. The 2010 indictment charged that Respondents repeatedly falsified Certificates of Insurance to make it appear to public entities that various taxi companies had \$500,000 in insurance coverage when such was not the case. Count 2 further alleged that the Respondents failed to notify the Department of the 2010 indictment within 30 days in violation of N.J.S.A. 17:22A-40a(2), (8), (18) and N.J.S.A. 17:22A-47b.

Count 3 alleged that on July 6, 2011 All Business pled guilty to, and on September 6, 2011 it was convicted on 28 counts of the 2010 indictment. Through its guilty plea All Business admitted that it committed 28 counts of Tampering with Public Records in the 3rd Degree by intending to defraud others by falsifying insurance documents, in violation of N.J.S.A. 2C:28-7A(1). All Business was sentenced to pay a \$40,000 criminal penalty. On July 6, 2011 in

accordance with New Jersey Court Rule 3:28 and pursuant to N.J.S.A. 2C:43-12 et seq., Novillo was admitted to the Morris County PTI program through July 5, 2013 on the charges contained in the 2010 indictment. Count 3 charged that the conduct underlying the conviction and Novillo's and All Business' failure to notify the Department of the conviction within 30 days constituted violations of N.J.S.A. 17:22A-40a(2), (6), (7), (8), (16) and (17).

Count 3 further alleged that Novillo was the DLRP, an officer and 10% owner of All Business during the time period when it committed the aforementioned criminal conduct and, as such, Novillo is responsible for its violations of the State's Insurance Laws, pursuant to N.J.S.A. 17:22A-40a(2), and (8) and N.J.S.A. 17:22A-32b(2).

Count 4 alleged that on or about April 1, 2009 and April 1, 2011, Novillo completed renewal applications for his insurance producer license and that, on both renewal applications, Novillo falsely responded "no" to question #1 which asked if he had ever been charged with committing a crime since either his last renewal or his initial insurance producer license application, in violation of N.J.S.A. 17:22A-40a(2), (8) and (15).

Count 5 alleged that on or about June 1, 2009 and June 1, 2011, All Business completed renewal applications for its organizational insurance producer license and on both applications All Business falsely responded "no" to question #1 which asked if it or any of its members had ever been charged with or convicted of committing a crime since either its last renewal or its initial insurance producer license application, in violation of N.J.S.A. 17:22A-40a(2), (8), and (15).

Although not specifically ordered in the Initial Decision, as evidenced by the Conclusions of Law reached and the fines ordered in it, the ALJ granted the request of the Department in its written closing argument to amend the OTSC to add a Count 6 alleging that the Respondents had

issued 27 fraudulent Certificates of Insurance in violation of N.J.S.A. 17:22A-40a(2), (8), and (15). As was noted above, Novillo did not oppose the request that the OTSC be so amended, nor did he take exception to the amendment in the exceptions he filed to the Initial Decision.

The Initial Decision addressed the following legal issues:

Did the Department prove by a preponderance of the substantial credible evidence that Respondents violated the insurance statutes of New Jersey? If so, should Respondents' licenses be revoked and what are the appropriate fines and costs to be imposed?

TESTIMONY

Ugalde, is a consultant employed by CSI who previously worked for the Dover Police Department. Ugalde investigated whether taxicab companies were in compliance with the Dover ordinance requiring a commercial automobile insurance policy providing combined single limit coverage of \$500,000 per taxi. According to Ugalde, his investigation established that two sets of coverage certificates were produced by Novillo and All Business for certain taxicabs licensed to operate in Dover. Certain certificates were produced for submission to Dover which misstated the coverage limits as \$500,000, while certificates showing a coverage amount of \$50,000 were used with MVC registrations. (P-1 A, B, C, D, F, G).

According to Ugalde, he produced the disparate certificates for review by All Business employees Angie Vargas, Maria Herrera and Luis Castro, who each confirmed their authenticity. The Certificates were signed by Novillo and issued to Queens Limo, (P-6), and Chamo Limo, (P-7 & 8). Ugalde also testified about documents that were provided by All Business and Novillo and issued to the same taxi company, but which indicated different coverage amounts. (P-9). One document indicated \$500,000 of coverage and the other indicated \$50,000. The \$500,000 certificate was provided to Dover and the other was provided to the MVC. Ugalde produced

documents issued by All Business and Novillo indicating different coverage amounts for Chamo Limo. (P-9). One document indicated \$500,000 in coverage and the other indicated \$50,000 in coverage for the dates from October 1, 2005, to October 1, 2006. Another document produced by Ugalde revealed that Novillo had signed a Certificate of Liability Insurance which was given to Dover that shows coverage of \$500,000, with the insurer being American Millennium, for Apple Limo & Taxi. (P-11). Documents were also produced indicating insurance for Apple Limo & Taxi with coverage of \$50,000 combined single limit. (P-12). Ugalde testified he contacted the insurance company, which confirmed the coverage limits for these taxicab companies to be \$50,000.

Ugalde stated that he conducted interviews with the owners of the taxi companies. The interviews were translated because the owners only speak fluently in Spanish. The interviews were then transcribed into English. (P-13, Hidalgo; P-14, Ramirez; P-15, Felice; P-16, Perez; and P-17, Herrera). During his interview Hidalgo, advised Ugalde that he had difficulties getting insurance and one of the other taxicab company owners referred him to All Business and said they would help him. Hidalgo stated that he received a letter from Dover advising him of the change in its ordinance and he took the letter to Novillo, who advised him that he would take care of it. Hidalgo informed Ugalde that he received two stacks of certificates: one stack was for \$50,000 in coverage for the MVC and the other stack was for coverage of \$500,000 for Dover. Novillo instructed Hidalgo not to mix them up. (Ugalde - Direct, 60: 22-25, December 9, 2013). According to Ugalde, Hidalgo stated that he was instructed by Novillo to disregard bills and to pay the bill in cash at his office. (Ugalde – Direct, 61: 1-5, December 9, 2013).

On December 30, 2008, Ugalde conducted an interview with Jose Ramirez. He too was referred to Novillo by another taxi company owner and he dealt with Novillo directly. Ramirez

signed a blank insurance application. He brought the Dover letter to Novillo and, like Hidalgo, received two stacks of documents—one with coverage for \$50,000 and one with coverage for \$500,000.

On September 5, 2008, Ugalde conducted an interview with Teresa Felice, who is Perez's mother. She indicated that she had met with Novillo in order to process the insurance applications. Felice stated that she signed blank forms given to her by Novillo. She also received two stacks of documents, one for \$50,000 in coverage for the MVC and one for \$500,000 in coverage for Dover. Ugalde then conducted an interview with Perez, who was the owner of Queens Limo. Perez basically told Ugalde the same information as stated by Felice.

Ugalde further testified that he conducted an interview with Maria Herrera on June 4, 2009. Herrera is the sister of Novillo's wife and was an employee of All Business. Herrera told Ugalde that Novillo was processing the real value certificates to the insurance companies to allow time to process the bogus paperwork required by Dover. She was aware that there were two separate certificates of insurance in the amounts of \$50,000 and \$500,000 for the taxis and she had a conversation with Novillo about it. Herrera stated that Novillo had a very good handle on the operations and actions in the office. He had passwords and the ability to get into the computers since he operates the company. Herrera stated to Ugalde that regardless of what paperwork would go through the office, Novillo would know about it.

Ugalde testified that he submitted his preliminary results to the Dover police, who in turn referred the matter to the Morris County Prosecutor's Office in 2006. Thereafter, indictments were filed in 2007 and 2010. (P-18; P-19). The defendants in the 2007 indictments were Aquiles Novillo, All Business Insurance Managers, Hipolito Arias Caraballo, Danilo Arias, 07 Taxi & Limo, Jose Perez, Queens Limo, Jose Ramirez, and Apple Limo. The charges were

conspiracy to commit insurance fraud, tampering with evidence, tampering with public records, and insurance fraud in the second degree. The 2010 indictment was against All Business Insurance Managers, Inc. and Aquiles Novillo only. The results of the indictments were a guilty plea by All Business (P-20) and PTI for Novillo (P-21).

Ugalde further stated that Louis Castro (Castro) was the assistant manager at All Business. Castro was responsible for the Paterson branch office. Castro said the employees of All Business stated that Novillo was the boss of the company. They described Novillo as running a very tight ship, with very tight controls and that he would have knowledge of everything that went through the business. Ugalde also testified that there was another similar misrepresentation dealing with Tilcon for which Herrera took almost all the blame.

Hidalgo was the owner of Chamo Limo, Inc. for seven years. He testified that he obtained insurance from All Business for his company. Hidalgo never filled out an insurance application because he did not know English, so he signed a blank form. Hidalgo dealt with Novillo when he obtained his insurance. He never received a bill from Novillo for the insurance. Hidalgo explained that P-7 was one of the forms he received from Novillo that he would give to the town of Dover. The amount of insurance on this form was \$500,000. P-8 was the proof of insurance which showed \$50,000 that he gave to the MVC. Hidalgo asked Novillo if there was a problem because one form indicated \$50,000 and the other \$500,000. Hidalgo indicated that Novillo stated there was no problem. Novillo told him to take the \$50,000 document to the MVC and take the one with \$500,000 to the town of Dover. When reviewing his insurance application (P-9) Hidalgo stated that he signed the form after it was completed.

Maria Herrera ("Herrera") worked for All Business and Novillo from approximately 2004 to at least 2006 and performed tasks for the company which included filling out insurance

applications for clients. Herrera confirmed that Apple Limo and Chamo Limo were clients of All Business, as were 07 Taxi & Limo and Queens Taxi & Limo. When Herrera prepared the applications, she would ask questions of the client and she would sign the application.

Herrera was shown the insurance application for Chamo Limo. (P-9). The application to American Millennium shows a request for insurance in the amount of \$50,000. Herrera stated that there were times when customers came to the agency and Novillo made her sign the form. She claimed that many of the insured clients went directly to Novillo. The liability insurance certificate for Chamo (P-8) showed that they were insured for \$50,000, which was sent to the MVC. A second liability insurance certificate for Chamo (P-9) shows insurance in the amount of \$500,000. Herrera stated that Novillo would tell her the amounts to place on the insurance forms. Herrera further stated that she would object to printing and signing these forms, as she knew it was wrong. Novillo told her to sign the form because she was the one who had the license. Herrera stated that there were many times when she refused to sign the forms. She signed the forms because she was an employee, a single mother with two children, and afraid that she would lose her job.

Upon cross-examination, Herrera stated that she was fired when the inquiry into this matter first started. Herrera also stated that she was in charge of the commercial division and Angela Vargas assisted her. Herrera further stated that Louis Castro was in charge of personal insurance. Herrera testified that she never had a taxicab driver sign a blank form. Herrera admitted that she sued Novillo after she left his agency.

Herrera was shown exhibit P-7 and identified the mark in the lower right-hand side as Novillo's signature. She had seen Novillo sign that way in the past. Herrera stated that no one else in the office would sign the same way as Novillo. Herrera also stated that everyone reported

to Novillo and any time a certificate of liability coverage would be signed off on that was going to Dover or to the MVC, Novillo would review it many times. In addition, Herrera testified that prior to completing an application for insurance to be sent to the insurance company Novillo would review it.

Aquiles Novillo also testified. He described his job at All Business as doing the accounting. He would look over the statements and made sure they got paid. All Business used the Amsoft computer program. After the initial indictment, he changed the software program and used AMS 360. The new system pinpoints a number to each insurance certificate, whereas the old system did not.

Novillo testified that he did meet the taxicab owner customers who walked into the office and that he did not do everything. When Dover passed the ordinance increasing the coverage limit for taxicabs, Novillo spoke with the carriers to find out if the limits on the policies of his taxicab company clients could be increased. Novillo spoke with American Millennium which stated that the increase would not be cost effective. Novillo indicated that he was able to get coverage from Scottsdale for \$500,000. He bound the accounts without knowing the premium. Novillo explained that the increased amounts were not cost effective because the taxicab companies would consistently change drivers and cars and therefore it was difficult to track all the changing information.

Novillo stated that he never spoke one-on-one with either Ugalde or anyone from the Department, the Prosecutor's Office, or the Dover Police Department. Novillo denied that he ever told Maria Herrera or Louis Castro to "phony up" a certificate of insurance. In addition, Novillo denied ever signing a certificate of insurance. Novillo denied making the squiggle on

the certificates that the other witnesses testified was his signature and indicated he had never seen anything like that squiggle. Novillo testified he never signed anything with his initials.

Novillo further testified that the taxicab companies would pay in cash because that was how they would be paid and the cash was given to Herrera. Novillo denied that anyone would sign blank forms. Novillo stated that Herrera and the owners of the taxicab companies were not telling the truth when they stated he signed the certificates.

Novillo was indicted in December 2007. In April of 2009, Novillo testified that he renewed his insurance producer license by completing questions which required his disclosure of being criminally charged or convicted of crimes. One question asked “since [his] last renewal, was [he] convicted of a crime or charges with committing a crime?” Novillo responded “no.” Novillo stated that there was an addition to the question that stated “not previously reported.” When asked if he previously reported the indictment, Novillo stated that he did not personally report it. To the next question “whether there is a charge against [him] or something pending?” Novillo also replied “no” because “once your response is no to the first one it just continues to the second term as well.” (Novillo Cross P. 222). The most recent renewal application is dated December 5, 2013. Novillo admitted he did not report his 2007 and 2010 indictments within thirty days to the Department and failed to report the indictments and judgment of conviction for All Business within thirty days, all in violation of N.J.S.A. 17:22A-47b.

CREDIBILITY

The ALJ noted that the testimony of the witnesses was in conflict and that the determination of the issues in this case required that he make credibility determinations with regard to the critical facts. According to the ALJ, for testimony to be believed it must not only come from a credible witness, but it also has to be credible in and of itself. The ALJ further

noted that a credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963).

Based upon his consideration of the testimony and documentary evidence presented and his observation of the demeanor of the witnesses, the ALJ found the testimony of Peter Ugalde, Usavio Hidalgo, and Maria Herrera to be credible. According to the ALJ, Ugalde was clear, concise, and wholly consistent with the documentary evidence submitted. The ALJ further found that there was no observable indication from the manner in which he testified that he was fabricating his testimony for any reason. Therefore, the ALJ found Ugalde's testimony to be highly credible.

In contrast, the ALJ found the testimony of Novillo to be unbelievable, noting that his explanation as to why he did not disclose the indictments and charges was so convoluted as to test the bounds of logic. According to the ALJ, Novillo's testimony showed him as a detached and unaware owner and manager associated with the insurance business. In addition, the ALJ determined that Novillo had every motive to alter his testimony as opposed to that of Ugalde who was clearly unbiased and objective. Finally, the ALJ determined that many of the assertions made by Novillo were not supported in any way by any corroborating testimony or legally competent evidence, which makes Novillo's testimony suspect and incredible.

FINDINGS OF FACT

Having considered the testimony of the witnesses and reviewed the documentary evidence, the ALJ found the following as facts:

1. Novillo was licensed as an insurance producer by the Department on or about May 10, 1991. (P-28).

2. The insurance producer license for Novillo expired on March 31, 2013, and was renewed thereafter. (P-29).
3. All Business was licensed as an insurance producer by the Department on May 5, 1995. (P-29).
4. Novillo was the DLRP for All Business. (P-29).
5. All Business' insurance producer license expired on May 5, 2013, and is currently inactive. (P-29).
6. In 2004, the Town of Dover changed its ordinance and increased insurance requirements for taxicab companies to a combined-single-limit liability amount of \$500,000 per taxi.
7. On or about April 4, 2006, the Dover Police Department began an investigation involving All Business.
8. All Business produced certificates of insurance for taxicab companies operating in Dover which showed that the taxi companies had combined-single-limit coverage of \$500,000 per vehicle when, in fact, they were only insured for \$50,000.
9. Ugalde conducted an investigation for Dover and interviewed the owners of taxicab companies that operated in Dover between 2004 and 2006, representatives of insurance companies that insured the taxicab companies, and employees of All Business.
10. During his investigation, Ugalde reviewed available certificates of insurance filed with Dover for all taxicab companies operating in Dover since the ordinance raising the coverage limit to \$500,000 was enacted.
11. All available certificates of insurance that were filed with Dover indicated that all taxicab companies operating in Dover had the required \$500,000 combined-single-limit coverage in place.

12. It is estimated that the twenty-seven certificates of insurance that the Department produced at the hearing are only a fraction or about 1/40th of the total certificates of insurance filed with Dover that showed that taxicab vehicles were insured at the required \$500,000 limit.
13. Samples of Certificates of Insurance that All Business produced for 07 Taxi & Limo, Inc. and that were submitted to Dover include dates of April 15, October 5, October 26, November 14, and December 6, 2005.
14. The Certificates of Insurance for 07 Taxi & Limo showed a combined-single-limit insurance coverage of \$500,000. (P-1).
15. The Certificates of Insurance for 07 Taxi & Limo showed that the insurance company was American Millennium Insurance. (P-1).
16. For each Certificate of Insurance produced by All Business for Dover showing coverage of \$500,000 per taxicab, a second certificate of insurance was produced to be filed with the MVC showing insurance coverage of \$50,000.
17. On or about July 13, 2005, All Business obtained a quote for \$50,000 combined-single-limit coverage from American Millennium on behalf of 07 Taxi & Limo to renew its existing insurance coverage for the policy period from July 25, 2005, to July 25, 2006. (P-2).
18. The declaration page for the renewal showed that American Millennium provided a combined-single-limit coverage of \$50,000 to 07 Taxi & Limo for the policy year July 25, 2005, to July 25, 2006. (P-3).

19. Samples of Certificates of Insurance that All Business produced for Queens Limo, Inc. and that were submitted to Dover include dates of March 30, April 28, May 11, May 19, July 18, August 8, August 11, and November 8, 2005. (P-4).
20. The Certificates of Insurance for Queens Limo showed a combined-single-limit insurance coverage of \$500,000. (P-4).
21. The Certificates of Insurance for Queens Limo showed that the insurance company was American Millennium. (P-4).
22. The declarations page for a renewal for Queens Limo for the policy period of March 17, 2005, to March 15, 2006 showed that its single-liability-limit coverage was actually \$50,000. (P-5).
23. Each time All Business produced a Certificate of Insurance for Queens Limo to be filed with Dover, a second certificate of insurance was also produced to be filed with MVC. (P-6).
24. The Certificates of Insurance produced for Queens Limo to be filed with MVC showed insurance coverage of \$50,000. (P-6).
25. Samples of Certificates of Insurance that All Business produced for Chamo Limo, Inc. and that were submitted to Dover include dates of March 17, March 31, July 21, September 13, October 11, December 1, and December 12, 2005. (P-7).
26. The Certificates of Insurance for Chamo Limo showed a combined-single-limit insurance coverage of \$500,000. (P-7).
27. The Certificates of Insurance for Chamo Limo showed that the insurance company was American Millennium. (P-7).

28. On or about September 16, 2005, All Business obtained a quote for renewal of an existing policy for a \$50,000 combined-single-limit coverage from American Millennium on behalf of Chamo Limo. (P-9).
29. The declaration page on the renewal policy showed that American Millennium provided a combined single limit of \$50,000 to Chamo Limo from October 1, 2005, to October 1, 2006. (P-10).
30. Each time All Business produced a Certificate of Insurance for Chamo Limo to be filed with Dover, a second certificate was also produced to be filed with the MVC which showed insurance coverage of only \$50,000. (P-8; P-9; P-13).
31. On or about August 12, 2005, All Business obtained a quote for renewal for a \$50,000 combined-single-limit coverage policy from American Millennium on behalf of Apple Limo Taxi Service, Inc. for policy year August 16, 2005 to August 16, 2006. (P-12).
32. Samples of Certificates of Insurance that All Business prepared for Apple Limo that were submitted to Dover include dates of August 26, September 22, October 14, 2005, and four certificates dated March 21, 2006. (P-11).
33. The Certificates of Insurance for Apple Limo showed a combined-single-limit insurance coverage of \$500,000. (P-11).
34. The Certificates of Insurance for Apple Limo showed that the insurance company was American Millennium. (P-11).
35. Each time All Business produced a Certificate of Insurance for Apple Limo to be filed with Dover, a second certificate was also produced to be filed with the MVC which showed insurance coverage of only \$50,000. (P-14).
36. Maria Herrera worked at All Business as an insurance producer between 2002 and 2006.

37. At all relevant times between 2004 and 2006, Novillo instructed Herrera to produce Certificates of Insurance for taxicab companies showing \$50,000 in coverage to be filed with the MVC and \$500,000 in coverage for Dover.
38. At various times between 2004 and 2006, Herrera informed Novillo that the Certificates of Insurance filed with the MVC showed a different coverage limit from the Certificates of Insurance filed with Dover for various taxicab companies.
39. At various times between 2004 and 2006, Herrera informed Novillo that the Certificates of Insurance showing coverage of \$500,000 from American Millennium and submitted to Dover were wrong.
40. Novillo reviewed and authorized nearly all Certificates of Insurance issued for Dover and the MVC at all relevant times.
41. Between 2006 and 2007, All Business generated gross premiums of about \$7,000,000 a year and commissions of about \$700,000 a year.
42. Novillo is a current co-owner and DLRP of AB Insurance Company.
43. Respondents were never interviewed by any investigator from the Department regarding either the 2007 indictment or the 2010 indictment.
44. Respondents did not report either the 2007 indictment or the 2010 indictment against All Business and Novillo to the Department.
45. Respondents were charged with insurance fraud in the third degree and tampering with records in the third degree in the 2007 indictment.
46. Respondents were charged in the 2010 indictment with tampering with public records and information in the third degree, falsifying or tampering with public records in the fourth degree and conspiracy in the third degree. (P-19).

47. The 2010 indictment alleged that respondents altered and falsified insurance documents for various taxi companies and repeatedly provided falsified Certificates of Insurance to make it appear that the taxicab companies had \$500,000 in insurance coverage when, in fact, the taxicab companies only had \$50,000 in insurance coverage. (P-19).
48. Respondents failed to notify the Department within thirty days of the 2007 indictment as required by N.J.S.A. 17:22A-40a(2), (8), (18) and N.J.S.A. 17:22A-47b.
49. Respondents failed to notify the Department within thirty days of the 2010 indictment as required by N.J.S.A. 17:22A-40a(2), (8), (18) and N.J.S.A. 17:22A-47b.
50. On September 6, 2011, All Business was convicted of twenty-eight counts of tampering with public records in the third degree (N.J.S.A. 2C:28-7A(1)), one count of falsifying or tampering with public records in the fourth degree (N.J.S.A. 2C:21-4A), one count of conspiracy in the third degree (N.J.S.A. 2C:5-2) and sentenced to pay a \$40,000 criminal penalty. (P-20).
51. Respondents failed to notify the Department within thirty days of the conviction as required by N.J.S.A. 17:22A-40a(2), (8), (18) and N.J.S.A. 17:22A-47b.
52. On July 6, 2011, Novillo was admitted to PTI for the 2010 indictment. (P-21).
53. Respondents failed to notify the Department within thirty days of Novillo's entry into PTI as required by N.J.S.A. 17:22A-40a(2), (8), (18) and N.J.S.A. 17:22A-47b.
54. On April 1, 2009, and April 1, 2011, Novillo completed online renewal applications with the Department for his insurance producer license. (P-26).
55. In both the 2009 and 2011 renewal applications, Novillo responded "no" to questions which asked if he had ever been charged with committing a crime since either his last renewal or his initial insurance producer license application. (P-26).

56. On June 1, 2009, and June 1, 2011, All Business completed renewal applications with the Department for its organizational insurance producer license. (P-27).
57. In both of the organizational insurance producer license renewal applications, All Business responded “no” to questions which asked whether it or any of its members had ever been charged or convicted of committing a crime since either its last renewal or its initial insurance producer license application. (P-27).
58. The Department’s costs of investigation and prosecution in this matter total \$1,800.
59. The Department’s costs of investigation and prosecution in this matter are reasonable.

LEGAL CONCLUSIONS OF THE ALJ

The ALJ noted that the conduct of insurance producers in New Jersey prior to November 4, 2002, is governed by the New Jersey Insurance Producer Licensing Act, N.J.S.A. 17:22A-1 to 25. The conduct of producers after November 4, 2002, is governed by the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48. The Initial Decision indicates that some of the challenged actions occurred before November 4, 2002, and some after that date. Therefore, according to the ALJ, both laws are applicable.

The ALJ determined that N.J.S.A. 17:22A-17a provided that the Commissioner may revoke, suspend, or refuse to issue or renew a license for any of several causes, including having willfully violated any provision of the insurance laws of this state; having failed to notify the commissioner within thirty days of a conviction for any crime; or having demonstrated unworthiness, lack of integrity, bad faith, dishonesty, financial irresponsibility or incompetency to transact business as an insurance producer.

The Initial Decision further noted that under N.J.S.A. 17:22A-40a, the Commissioner may revoke or refuse to renew a license or levy a civil penalty for any of several causes,

including having been convicted of a felony or crime of the fourth degree or higher, or having failed to notify the Commissioner within thirty days of prosecution or conviction of any crime. The ALJ also noted that the New Jersey Insurance Producer Licensing Act is designed to protect the public from illegal and unethical actions by insurance agents and brokers. In re Proceedings by the Comm'r of Banking and Ins., 98 N.J. Super. 263, 268 (App. Div. 1967); Fortunato v. DelMauro, 93 N.J.A.R.2d (INS) 37. The ALJ further determined that the State has the authority to pursue violations of the New Jersey Insurance Producer Licensing Act administratively and has the authority to revoke or suspend an individual's insurance producer license, and to require the payment of fines, restitution, and costs of investigation and prosecution.

According to the ALJ, in the instant matter the civil judgments and the criminal judgment of conviction against Aquiles Novillo, obtained as a result of his insurance-producer business activities, support revocation of his insurance producer license. Novillo's position is that the employees of All Business were solely responsible for the fraudulent certificates. Novillo claims that he was totally unaware of these schemes. The ALJ concluded that these assertions by Novillo lack credibility.

The ALJ compared the instant case with Fortunato v. Catherine Conte t/a Conte Insurance Agency, 92 N.J.A.R.2d (INS) 17, where an insurance producer was presented with an Order to Show Cause why she should not have her license revoked after a final judgment of consumer fraud was entered against her and her agency, she had declared personal bankruptcy, and had failed to pay the final judgment. The Commissioner adopted the administrative law judge's conclusion that Conte's failure to pay the final judgment established that she had demonstrated unworthiness and inability to transact business as an insurance producer.

The ALJ concluded that the transgressions in this case are worse than those in Conte, as there are three judgments against Novillo, one criminal judgment of conviction as the principal of All Business and two civil judgments, all brought about through Novillo's insurance producer activities. The ALJ further determined that there is clear evidence that Novillo is unworthy to transact business as an insurance producer and has been financially irresponsible in the performance of his duties as an insurance producer, including the testimony of Hidalgo, a taxi company owner, who stated that he basically dealt with Novillo whenever he used All Business. Hidalgo stated that he received the certificates of insurance from Novillo and sometimes obtained them from Herrera if Novillo was not around. Most telling was Hidalgo's testimony that whenever he registered a new vehicle Novillo would personally give him a certificate of insurance showing \$50,000 of coverage to be filed with the MVC and a certificate of insurance showing coverage of \$500,000 to be filed with Dover.

The ALJ determined that Novillo did not inform the Commissioner of his indictments within the thirty-day period required by N.J.S.A. 17:22A-17a and -47b. No notice was given to the Department until the Morris County Prosecutor did so after Ugalde had commenced his investigation. Novillo claimed that he did not know that he had to notify the Department about the indictments and the All Business conviction, as they were already aware of the investigation. The ALJ determined that as the license holder, it was Novillo's responsibility to know what is required of an insurance producer licensee in New Jersey. Ignorance of the law is not an excuse. The ALJ further noted that the convictions for misconduct by a corporate official and theft by deception further established Novillo's unworthiness, lack of integrity, bad faith, dishonesty, financial irresponsibility and incompetency to transact business as an insurance producer pursuant to N.J.S.A. 17:22A-17a(2). (Initial Decision, at 19).

The ALJ opined that insurance producers have a duty to act with reasonable skill and diligence in performing the services of an insurance broker. Rider v. Lynch, 42 N.J. 465 (1964). In Rider, the New Jersey Supreme Court stated that “anyone who holds himself/herself out to the public as an insurance broker is required to have the skill and knowledge requisite to the calling. The law mandates that such a person exercise good faith and reasonable skill, care and diligence in the execution of the duties of an insurance broker/producer.” (Id. at 476).

PENALTIES DETERMINED BY THE ALJ

Having concluded that Novillo and All Business violated relevant portions of the insurance statutes of New Jersey, the ALJ determined that the insurance producer licenses of Novillo and All Business should be revoked.

In addition to revocation, the ALJ noted that violators of the Insurance Producer Acts shall be held liable for monetary penalties and required to reimburse the Department for the costs of investigation and prosecution, as deemed appropriate, pursuant to N.J.S.A. 17:22A-17b and N.J.S.A. 17:22A-45c. The case of Kimmelman v. Henkels & McCoy, 108 N.J. 123, 137-39 (1987), established seven factors to evaluate when imposing administrative fines. They are: (1) the good or bad faith of the defendant; (2) the defendant’s ability to pay; (3) the amount of profits obtained from the illegal activity; 4) injury to the public; (5) the duration of the illegal activity; (6) the existence of criminal actions; and (7) past violations.

With respect to the Kimmelman factors, the ALJ made the following findings:

On factor (1), that Novillo acted in bad faith. Novillo had extensive experience in the insurance industry since 1991. Novillo’s claims of innocence lacked credibility given his history in insurance and the evidence regarding Novillo’s hands-on treatment of the company’s affairs. The ALJ recommended that Novillo and All Business be assessed a penalty under this factor;

On factor (2), that All Business does not have the ability to pay as it has closed. However, Novillo has the ability to pay. When it operated All Business generated premiums of up to \$7,000,000 and commissions of up to \$700,000 per year. Novillo testified that he is still working for an insurance company, AB Insurance, which is currently operational and owned by his wife;

On factor (3), that it is difficult to determine if Novillo or All Business obtained any profits from their illegal and inappropriate activities. Most of the taxi companies paid their premiums in cash. No evidence was produced at the hearing showing that Novillo or All Business profited from the illegal and inappropriate insurance activities. However, there was evidence showing that during the time period in issue All Business made annual profits of approximately \$700,000. Novillo and All Business failed to provide sufficient information showing clearly the profits made by the company;

On factor (4), that there was injury to the public. Numerous taxi companies found themselves uninsured. These companies ended up closing or selling off their companies;

On factor (5), that the activity took place from 1998 to 2002. The activity was not isolated or limited to a single event but rather covered numerous taxi companies over several years;

On factor (6), that the actions did give rise to criminal prosecution despite the fact that Novillo's criminal cases were resolved through his admission into PTI. All Business was convicted and ordered to pay a criminal fine of \$40,000. No fines were imposed against Novillo as a result of his admission into the PTI program; and

On factor (7), that there were no prior violations.

Based upon the foregoing analysis, the ALJ concluded that it is appropriate that the following fines be assessed jointly and severally against All Business and Novillo: Count 1: \$5,000; Count 2: \$5,000; Count 3: \$5,000 and \$5,000; Count 4: \$10,000 and \$10,000; Count 5: \$10,000 and \$10,000 and Count 6: \$270,000, for total fines in the amount of \$330,000.

The ALJ further concluded that Novillo and All Business shall, jointly and severally, reimburse the Department for the costs of its investigation and prosecution of this matter, pursuant to N.J.S.A. 17:22A-45c, in the amount of \$1,800, which is the total of the reasonable costs indicated in the certification submitted by the Department's investigator based on a rate of \$50 per hour. That certification indicated thirty-six hours were used in the investigation and prosecution of this matter through December 9, 2013.

As was noted above, based upon the violations he concluded they had committed, the ALJ also ordered that the insurance producer licenses of Novillo and All Business be revoked.

PETITIONER'S EXCEPTIONS

The Department of Law and Public Safety on behalf of the Petitioner filed exceptions to the Initial Decision on April 29, 2014. The Department concurs with the ALJ's order revoking the insurance producer licenses of the Respondents and imposing total monetary penalties of \$330,000, as well as costs of \$1,800, jointly and severally, against Respondents.

However, the Department submitted the following exceptions to the Initial Decision and requested the following modifications and supplements to the Initial Decision.

1. The Findings of Fact should reflect that all of the taxi company owners that filed fraudulent certificates of liability insurance with Dover were forced to sell or close down their companies as a result of plea agreements they reached with the Morris County Prosecutor's Office. (Ugalde Cross 103: 14-24, Dec 9, 2013).

2. The Initial Decision on page 17 refers to the New Jersey Insurance Producer Licensing Act, N.J.S.A. 17:22A-1 to -25, which governed producer conduct prior to November 4, 2002. Since all of the violations alleged in the OTSC occurred after that date, any references to this superseded act should be deleted.

3. On page 20, in the Monetary Penalties section, the ALJ noted that numerous taxi companies found themselves uninsured and ultimately closed or sold off their companies. The Final Decision should reflect that: numerous taxi company owners found themselves underinsured and in violation of the Dover ordinance which required a combined single limit liability coverage for taxi companies in the amount of \$500,000 per vehicle. These owners closed or sold their companies as a result of plea agreements made with the Morris County Prosecutor's Office.

4. On page 20, in the Monetary Penalties section, the ALJ noted that the fraudulent activity took place from 1998 to 2002. However, the fraudulent activity commenced after Dover enacted the ordinance that raised the combined single limit liability coverage amount required of taxi companies to \$500,000 per cab in 2004 and continued until at least 2006 when Dover began its investigation.

5. While the Department concurs with the total penalty assessed by the ALJ, the Final Decision should reflect how the fine was derived. The Department sought fines totaling \$330,000, itemized as follows:

Count 1 - Failure to Report 2007 Indictment -	\$5,000
Count 2 - Failure to Report 2010 Indictment -	\$5,000
Count 3 - Failure to Report Conviction -	\$5,000
Count 3 - Failure to Report Novillo's admission to PTI -	\$5,000

Count 4 - Material Misrepresentation on Novillo's 2009 License Renewal -	\$10,000
Count 4 - Material Misrepresentation on Novillo's 2011 License Renewal -	\$10,000
Count 5 - Material Misrepresentation on All Business' 2009 License Renewal -	\$10,000
Count 5 - Material Misrepresentation on All Business' 2011 License Renewal -	\$10,000
Count 6 - Amended pleadings alleging the issuance of 27 certificates of insurance falsely showing \$500,000 in insurance coverage-	<u>\$270,000</u>
Total Fines -	\$330,000

NOVILLO'S EXCEPTIONS

Novillo filed exceptions to the Initial Decision on April 28, 2014. He avers that the ALJ's findings and conclusions are based upon an inadequate and, at times, nonexistent record as follows.

1. The ALJ found that there are three judgments against Novillo, one criminal judgment of conviction and two civil judgments arising out of his insurance producer activities. (Initial Decision at 18). According to the Respondent, the ALJ further found that criminal convictions for misconduct by a corporate official, a second-degree offense, and theft by deception, a third-degree crime, establish Novillo's unworthiness, lack of integrity, bad faith, dishonest, financial irresponsibility and incompetence to transact business as an insurance producer. (Initial Decision at 18). Novillo avers that the ALJ's findings are not supported by the record or for that matter, by common sense, as Novillo was never convicted of any crime and never entered a plea to such charges, as he was admitted into the Morris County PTI program and all indictments against him were thereafter dismissed. Novillo further claims that many of the charges were

dismissed prior to his entry into PTI. According to Novillo, PTI is available only for first-time offenders in cases not involving serious criminal charges.

2. Novillo notes that the ALJ found that the activity he engaged in was not an isolated event and took place from 1998 to 2002, although the record proves that all relevant transactions occurred in 2005.
3. Although the ALJ found that the public was injured because taxicab companies that were involved closed or sold their businesses, the record does not support such a finding as the taxicab companies, who were also charged in criminal indictments, closed down because they could not afford the insurance required by Dover.
4. Novillo left the insurance brokerage business in January, 2013 and is now out of the insurance industry and is not the DLRP of his wife's AB Insurance Company.
5. Novillo contends that the ALJ erroneously found him to be a convicted felon who had civil judgments against him related to the present charges. Novillo asserts that the record does not support the ALJ's findings that he engaged in illegal conduct for over four years with injury to the public, that his actions warranted \$330,000 in fines, and that he has the ability to pay such monetary penalties. He further asserts that no proof was offered that he or his company profited in their dealings with the taxicab companies. To the contrary, the record reflects that having taxicab company clients was a losing financial proposition. Novillo further avers that the only supporting evidence in the record that he has the ability to pay the monetary penalties imposed are his commissions of \$700,000 in 2006, versus his 2014 earnings and his ability to pay such penalties today based upon his current earnings.

6. Novillo avers that he no longer works in the insurance industry. He contends that he has battled these allegations for almost eight years and that for that entire time his defense has been that Herrera, an employee of All Business, was solely responsible for the Producer Act violations. Novillo notes that Herrera performed such conduct at Tilcon and that the Tilcon proofs are on the record.

Novillo acknowledges the correctness of the ALJ's citation of the Kimmelman factors but disagrees with the ALJ's application of his findings to the seven Kimmelman factors as follows:

1. The conclusion Novillo demonstrated bad faith is erroneous as set forth above;
2. For the reasons set forth above, there was no basis to find that Novillo has the ability to pay the fines and penalties assessed;
3. Not one dollar was obtained by Novillo from the claimed illegal activity;
4. There is not one shred of evidence upon which one could find that the public was in any way injured;
5. The duration of the illegal activity, see above;
6. The existence of criminal actions, see above; and
7. There were no past violations.

Finally, Novillo avers that when analyzed in light of the Kimmelman factors, the record does not warrant the monetary penalties and punishment rendered, and further that Novillo's proven conduct does not warrant the revocation of his license. Therefore, the Respondent requests that the Commissioner's Final Decision and Order reflect the penalties and punishment appropriate to the violations proven.

PETITIONER'S REPLY EXCEPTIONS

The Department filed reply exceptions on May 9, 2014. The Department notes that Novillo's exceptions claim that the ALJ made incorrect findings of fact and argue against the ALJ's analysis, conclusions of law, and recommended penalties. The Department avers that the Novillo's exceptions completely ignore the record, including Novillo's testimony during the hearing on December 9, 2013.

The Department notes that Novillo's exceptions do not deny that indictments were filed against the Respondents in 2007 and 2010. Likewise, they do not deny that the Respondents provided false statements in their 2009 and 2011 renewal applications for their respective insurance producer licenses. The Department replied to each paragraph in Novillo's exceptions in the following manner.

1. The ALJ's finding on page 18, that Novillo is "unworthy to transact business as an insurance producer and has been financially irresponsible in the performance of his duties as an insurance producer" is not based on the existence or nonexistence of any criminal and/or civil judgment against Novillo. Rather, the ALJ relied on evidence in the record such as:

a) Hidalgo's testimony that he received the certificates of insurance from Novillo, and sometimes from Herrera, if Novillo was not available.

b) Hidalgo's testimony that whenever he registered a new taxi, Novillo would personally give Hidalgo a certificate of insurance showing \$50,000 coverage to be filed with MVC, and another certificate of insurance showing coverage of \$500,000 to be filed with Dover. In his exceptions, Novillo also stated that he was never charged with theft by deception and that all indictments against him were dropped at or prior to his entry into PTI. However, Novillo did not deny that the Respondents were indicted twice and that All Business was convicted for criminal offenses and the Respondents failed to notify the

Department within thirty days of both indictments and of the conviction against All Business. Consequently, the assertion that the charges against Novillo were dismissed is irrelevant. Finally, not only did Respondents fail to notify the Department of the two indictments and one conviction, Respondents also denied that they had been charged with committing any crime in their renewal applications for their respective producer licenses submitted on April 1, 2009 and April 1, 2011.

2. The Department noted that the production of the fraudulent certificates of insurance commenced sometime after Dover enacted its ordinance raising the combined single limit liability coverage requirement for taxi companies to \$500,000 per cab in 2004 and continued until at least 2006 when Dover began its investigation.

3. The ALJ correctly found that the public was injured because the taxicab companies involved ended up closing or selling off their businesses. At the hearing, Ugalde testified that all the taxicab company owners that filed fraudulent certificates of liability insurance with Dover were forced to sell or close their companies as a result of the plea agreements reached with the Morris County Prosecutor's office. (Ugalde Cross 103:14-24, Dec. 9, 2013).

4. The record supports the ALJ's finding that Novillo is the current owner and a DLRP of AB Insurance Company. The record reflects that Novillo's insurance producer license expired on March 31, 2013 and was renewed on or about April 1, 2013. (P-28, P-30; Novillo Cross 223:24-224:4). The record also shows that as of the hearing on December 9, 2013, Novillo was still an owner and DLRP for AB Insurance Company. (Novillo Direct 188:14-189:4; Novillo Cross 213:12-19). Therefore, Novillo's assertion in his exceptions that he got out of the insurance business in January 2013 is without merit.

5. The ALJ properly found that a monetary penalty in the amount of \$330,000 was warranted against Respondents and the record supports all of the ALJ's determinations on the Kimmelman factors. In his analysis of these factors, the ALJ found that: (1) Novillo acted in bad faith by producing fraudulent Certificates of Insurance to various taxicab companies; (2) All Business generated premiums of up to \$7,000,000 and commissions of up to \$700,000 per year in 2006 and 2007, which Novillo characterized as the typical commission in a good year during the time period. (Novillo Direct 198:9-13). The record shows that as of the hearing on December 9, 2013, Novillo was still an owner and DLRP of AB Insurance Company, an insurance company Novillo created after shutting down All Business. Without further evidence from the Respondents, it was proper for the ALJ to conclude that Respondents' ability to pay is sufficient to warrant substantial fines; (3) Respondents received mostly cash payments from the taxicab companies. Respondents did not provide evidence to support any profit or loss from servicing the taxicab companies; (4) There was significant injury to the public because numerous taxicab companies shut down as a direct result of the fraudulent certificates of insurance that were filed in Dover. The public was also at risk because anyone in the general public who may have been involved in an auto accident with, or ridden in any of the cabs insured through Respondents was not protected at the levels deemed sufficient by Dover; (5) Novillo provided numerous fraudulent certificates of insurance to numerous taxicab companies over several years; (6) Respondents' fraudulent activities gave rise to a criminal prosecution which resulted in PTI for Novillo and a conviction and \$40,000 fine for All Business; and (7) there were no prior violations.

6. In his exceptions, Novillo stated that the "linchpin" of his defense was that the All Business employees, especially Herrera, had produced the fraudulent Certificates of Insurance

without Novillo's knowledge. In particular, Novillo stated that Herrera had produced fraudulent Certificates of Insurance in another matter, Tilcon. The Department agreed, and acknowledged that evidence showed that Herrera produced some of the fraudulent Certificates of Insurance in the case at hand and in the Tilcon matter. However, the Department averred that one of the “linchpins” of its case is that Novillo directed his employee, Herrera, to produce the fraudulent Certificates of Insurance to the taxicab companies, including those involved in this case. The Department produced testimony by witnesses and transcripts of multiple interviews conducted by Ugalde in which multiple owners of taxi companies stated that Novillo was directly involved in the production of fraudulent Certificates of Insurance. The Department also presented testimony and transcripts of interviews in which these owners stated that they made multiple large cash payments directly to Novillo. Novillo provided no evidence, save his testimony, to support his lack of knowledge or involvement in the production of the fraudulent Certificates of Insurance. Another “linchpin” of the Department’s case is that Novillo renewed his insurance producer license and that of All Business at least twice after both he and All Business were indicted. In a total of five renewals (including Novillo’s most recent renewal application on April 1, 2013), Novillo denied that either he or All Business had ever been charged with any criminal offense since their initial application or last renewal application.

The ALJ’s credibility determinations are based upon his opportunity to observe the witnesses and are supported by credible evidence in the record. Pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., an agency head may not reject or modify findings of fact as to issues of the credibility of lay witnesses unless it is determined from a review of the record that the findings are arbitrary, capricious, or unreasonable, or are not supported by sufficient, competent and credible evidence in the record. N.J.S.A. 52:14B-10c.

For the foregoing reasons, the Department requested that the Commissioner adopt the ALJ's conclusions of law, revoke the Respondents' insurance producer licenses and impose the monetary penalties recommended by the ALJ in the Initial Decision.

LEGAL DISCUSSION

The facts in evidence establish that Novillo has been a licensed insurance producer from May 10, 1991 to the present and that All Business was a licensed insurance producer business entity from May 5, 1995 until the expiration of its license on May 5, 2013.

The evidence established that Novillo and All Business were indicted in 2007 for insurance fraud in the third degree and tampering with records in the third degree; and indicted in 2010 for tampering with public records and information in the third degree, falsifying or tampering with public records in the fourth degree, and conspiracy in the third degree. (P-19). Novillo entered the Morris County PTI program on July 6, 2011, which resulted in all charges against him being dismissed upon his completion of the program on July 6, 2013. The Initial Decision is Modified to reflect these dismissals.

Novillo, while a licensed insurance producer and the DLRP for All Business, completed license renewal questionnaires for himself and All Business in 2009 and 2011 in which he failed to disclose these indictments. He also failed to notify the Department within 30 days of the filing of the indictments. After pleading guilty, All Business was convicted on a total of 30 counts alleged in the 2010 indictment. Novillo also failed to notify the Department within 30 days of the entry of that judgment of conviction. The ALJ determined that there was substantial credible evidence in the record to establish that Novillo and All Business participated in falsifying public documents in order to conduct their deceptive scheme of misrepresenting insurance policy coverage amounts to Dover. On the basis of the conviction of All Business, Novillo's status as

its DLRP, and their said failures to notify the Department and misrepresentations on the renewal applications, the ALJ concluded that Novillo and All Business are guilty of violations of N.J.S.A. 17:22A-40a(2), (7), (8), (15), (16), (17) and (18) and N.J.S.A. 17:22A-47b, and that All Business also violated N.J.S.A. 17:22A-40a(6).

The conduct of insurance producers in New Jersey prior to November 4, 2002 is governed by the New Jersey Insurance Producer Licensing Act, N.J.S.A. 17:22A-1 to 25. The conduct of producers after November 4, 2002, is governed by the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to 48. Although the Initial Decision states that some of the challenged actions in this matter occurred before November 4, 2002 and some after that date, the record established that all of the alleged violations occurred after November 4, 2002. Therefore only the New Jersey Insurance Producer Licensing Act of 2001 is applicable to the facts applied herein. The Initial Decision is modified accordingly.

The New Jersey Insurance Producer Licensing Act of 2001 endows the Commissioner with the authority to regulate the business of insurance producers in the State of New Jersey. The Act and its predecessor were intended not only to impose penalties and provide restitution but, more importantly, to protect the public from illegal and unethical actions by insurance producers. See In Re Parkwood, 98 N.J. Super. 263, 268 (App. Div. 1967); Fortunato v. Del Mauro, 93 N.J.A.R.2d (INS) 37.

The State has the authority to revoke or suspend an insurance producer license and to require the payment of fines, restitution, and costs of investigation and prosecution. N.J.S.A. 17:22A-40.

N.J.S.A. 17:22A-40a provides that the Commissioner may suspend or revoke the license of an insurance producer “for any one or more of the following causes: ...

- (2) Violating any insurance laws ...
- (6) Having been convicted of a felony or crime of the fourth degree or higher;
- (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
- (8) Using any fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business ...
- (15) Intentionally withholding material information or making a material misstatement in an application for a license;
- (16) Committing any fraudulent act;
- (17) Knowingly facilitating or assisting another person in violating any insurance laws; or
- (18) Failing to notify the Commissioner within 30 days of his conviction of any crime, indictment, or the filing of any formal criminal charges, or..."

Prior decisions have consistently held that producer misconduct that involves violations of State insurance laws and evidences bad faith and dishonesty compel license revocation. The Act "is designed not only to impose penalties and provide restitution but more importantly to protect the public from the illegal and unethical actions by insurance agents and brokers." Commissioner v. Ayodeji, 97 N.J.A.R.2d (INS) 13, 15. Thus in addition to monetary penalties, a producer may also be subject to suspension or revocation of his license for such conduct.

The ALJ's mistake in referring to Novillo's conviction instead of to his admission into the PTI program, (Initial Decision at 18) does not constitute a basis for rejection of the ALJ's conclusions regarding Novillo's violations of the New Jersey Insurance Producer Licensing Act of 2001. His status as the DLRP of All Business, and the compelling evidence adduced

regarding his personal involvement in the issuance of fraudulent Certificates of Insurance to taxi company owners amply support the ALJ's legal conclusions on Novillo's guilt.

As the DLRP of All Business, Novillo was the person responsible for the oversight of the insurance placement process, including the negotiation, sale, binding, acceptance and delivery of the insurance applications, certificates of coverage, and declaration pages. As its DLRP, Novillo is also responsible and accountable for the conduct that resulted in the conviction of All Business for tampering with public records with intent to defraud others by falsifying insurance documents. N.J.S.A. 17:22A-32b(2). In addition, the All Business employees and taxi company owners testified consistently that Novillo was personally involved in procuring single taxicab liability insurance coverage of \$50,000 for his clients and falsifying certificates of coverage to indicate \$500,000 in coverage per taxicab for delivery to the Dover town clerk.

The record also clearly established that Novillo failed to notify the Department within 30 days of having been indicted on two occasions in violation of N.J.S.A. 17:22A-40a(18) and -47b. He also failed to disclose the indictments on two license renewal applications in violation of N.J.S.A. 17:22A-40a(15). Based upon the testimony of his employees and the taxi company owners, which the ALJ specifically found to be credible and amply supported by other evidence in the record, Novillo further violated the insurance laws of the State by falsifying certificates of coverage as noted above, all in violation of N.J.S.A. 17:22A-40a(2), (8) and (16). Consequently, Novillo has unquestionably demonstrated his unworthiness to hold an insurance producer license in this State pursuant to N.J.S.A. 17:22A-40a(2), (7), (8), (16), and (17).

A licensee's honesty, trustworthiness and integrity are of paramount concern, since an insurance producer is responsible to procure, collect and verify the correctness of policy coverage information, collect correct premium monies from insureds and deliver policy

documents to insureds and interested parties. The nature and duty of an insurance producer... “calls for precision, accuracy and forthrightness.” Fortunato v. Thomas, 95 N.J.A.R. (INS) 73. It is well established that a producer acts in a fiduciary capacity in the conduct of his insurance business. The producer’s fiduciary duties run both to the insured and the insurer. Strawbridge v. New York Life Ins. Company, 504 F. Supp. 824 (1980.) Hence a producer is held to a high standard of conduct, and should fully understand and appreciate the effect of fraudulent or irresponsible dealing on the industry and on the public.

Our strong policy is to instill public confidence in both insurance professionals and the industry as a whole. “An insurance broker acts in a fiduciary capacity and is held to a high standard of conduct. Close and continuous scrutiny of the licensee’s exercise of his license and the establishment of standards and guidelines are necessary to maintain the high standard of conduct and the degree of fidelity the Statute envisions.” See In Re Commissioner v. Parkwood 98 N.J. Super. 263, 268 (App. Div. 1967.) “Courts have recognized that the insurance industry is strongly affected with the public interest and the Commissioner is charged with the duty to protect the public welfare.” Having reviewed all of the evidence in this matter the conclusion is inescapable that the Respondents’ insurance producer licenses must be revoked. See Sheeran v. Nationwide Mutual Ins. Company Inc., 80 N.J. 548, 549 (1979). The revocation of Respondents’ producer licenses is the appropriate penalty for the violations proven in this matter pursuant to N.J.S.A. 17:22A-40a.

N.J.S.A. 17:22A-45c provides that the Commissioner may impose fines of up to \$5,000 for a first violation of any provision of the respective producer acts, and up to \$10,000 for each additional offense, and, in appropriate circumstances, may order restitution as well as reimbursement of the costs of investigation and prosecution. The ordering of restitution is

designed to make the victim whole, whereas the purpose of levying fines is to punish the wrongdoer, Commissioner v. Pappas Trucking Ins. Agency, Inc., 96 N.J.A.R. 2d (INS) 1, 7-8.

Pursuant to the Act, I must review the factors that have been considered in the past in calculating civil penalties in insurance producer cases. Under N.J.S.A. 17:22A-45c., some latitude is permitted as to the exact amount of a penalty based upon the aggravating and mitigating factors in a case. The factors that have been considered in the past in calculating civil penalties in such cases include:

1. Egregiousness of the acts and the economic burden imposed by both fine and license revocation. New Jersey Department of Insurance v. Louis Gelfand, Inc., 93 N.J.A.R.2d (INS) 61, 66;

2. Whether the violation occurred through innocent mistake or deliberate abuse of position and breach of trust, and the high standard of conduct to which insurance agents and brokers must be held. Fortunato v. Winograd, 93 N.J.A.R.2d (INS) 46;

3. The need to penalize the violator, the need to publicize the statutory requirements to the industry, inadvertence of the violation and lack of moral unfitness and blame, and the long and praiseworthy career of the violator. Fortunato v. Bandaroff, 93 N.J.A.R.2d (INS) 41, 44:

4. The length of the violator's unblemished service and the need for integrity, honesty, competence, and responsibility in the industry. Fortunato v. Morris, 93 N.J.A.R.2d (INS) 17, 19;

5. The deterrent effect of the fine, the culpability, unworthiness, incompetency, dishonesty or bad faith of the violator, and many years of good, professional service. Fortunato v. Bonavita, 92 N.J.A.R.2d (INS) 77, 79; and

6. The egregiousness of the acts and the public interest with which the insurance business is affected. Fortunato v. Conte, 92 N.J.A.R.2d (INS) 17, 22.

Applying these factors to this case, I find that Novillo's administrative violations and All Business's criminal acts compel the revocation of their producer licenses and the imposition of substantial monetary penalties.

I must also consider other factors when assessing civil penalties in cases such as this. As was referenced above, in Kimmelman, the Supreme Court of New Jersey prescribed standards for determining the appropriateness of a monetary penalty imposed by a State agency. The Initial Decision contains a Kimmelman analysis assessing Novillo's and All Business's conduct in light of the civil penalties available in this case. Both Novillo and the Department addressed that analysis in their Exceptions.

Kimmelman factor one addresses the good faith or bad faith of the defendant. I find that Novillo acted in bad faith. Novillo had extensive experience in the insurance industry. The ALJ determined that Novillo's claims of innocence and ignorance lacked credibility based upon his history in insurance as well as the evidence regarding Novillo's hands-on treatment of the company's affairs. I FIND no basis in the record that would support a rejection of this credibility assessment by the ALJ.

Kimmelman factor two requires consideration of the Respondents' ability to pay a civil monetary penalty. All Business has closed. However, Novillo has the ability to pay and has not produced any evidence in this matter that he is incapable to do so. When it operated, All Business generated commissions up to \$700,000 per year and the record reflects that it subsequently paid a \$40,000 monetary penalty. Although the ALJ determined that Novillo was still working for an insurance agency owned by his wife, in his exceptions Novillo asserted that

he now works outside of the insurance industry. Since Novillo is currently employed and retains at least an indirect ownership interest in an operating insurance agency, I FIND he is able to pay a substantial monetary penalty.

The third Kimmelman factor to be considered is the amount of profits obtained from the illegal activity. It is difficult to determine the level of profit Novillo and All Business obtained from their illegal activities. Most of the taxi companies paid their premiums in cash. The evidence produced at the hearing showed that All Business earned commissions of approximately \$700,000 in 2006 and 2007.

The fourth Kimmelman factor is injury to the public. I FIND that there was injury to the public. Numerous taxi companies found themselves underinsured. Underinsured motorists cause millions of dollars in damage in the State each year and only by providence did these underinsured taxicab owners escape substantial losses. In addition, members of the public were exposed to the risk of an underinsured loss. Also, the taxi companies involved either closed or were sold after the falsified certificates of coverage prepared by the Respondents and provided by them to the owners for filing with the Dover town clerk came to light.

Kimmelman factor five is the duration of the illegal activity. I FIND that the activity took place from 2004 and continued until at least 2006. The illegal activity was not isolated or limited to a single taxicab or taxi company, but rather extended to numerous taxicabs and companies in Dover.

The sixth Kimmelman factor is whether Novillo's misconduct has given rise to criminal or treble damages actions. I FIND that the actions did give rise to criminal prosecution. All Business plead guilty to the 28 counts, was convicted and sentenced to pay a fine of \$40,000. No

conviction was entered against and no fines were imposed upon Novillo as a result of his admission into the PTI program.

The final Kimmelman factor to be considered is the Respondents' past violations. The Department has not filed any prior disciplinary actions against All Business or Novillo.

Given the nature of the violations committed, consideration of these factors compels me to conclude that the imposition of a substantial fine is warranted.

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.), certif. denied, 107 N.J. 652 (1987). The New Jersey Insurance Producer Licensing Act of 2001 penalties are expressions by the Legislature that serve a distinct remedial purpose.

Applying all of the Kimmelman factors to the facts of this case, I have determined that the \$330,000 in fines imposed by the ALJ are necessary and appropriate. Accordingly, the fines recommended in the Initial Decision are ADOPTED.

The imposition of fines totaling \$330,000 is clearly supported by the record and well within the broad discretion afforded to the Commissioner. The revocation of Novillo's and All Business's producer licenses and the imposition of substantial fines are fully warranted, not only as sanctions upon the Respondents for their misconduct, but also to serve as a deterrent to other producers who might be tempted to engage in similar misconduct.

CONCLUSIONS

Having carefully reviewed the Initial Decision, the Exceptions filed by the parties, the Department's Reply-Exceptions, and the entire evidential record herein, I hereby ADOPT the Findings of Fact in the Initial Decision on the violations alleged in Counts 1, 2, 3, 4, and 5 of the OTSC, and on Count 6 as addressed in the Initial Decision.

The Initial Decision is MODIFIED to reflect that all of the taxicab company owners that filed fraudulent certificates of liability insurance with Dover were forced to sell or close their companies as a result of the plea agreements they reached with the Morris County Prosecutor's office.

The first paragraph of page 17 of the Initial Decision, which refers to the New Jersey Insurance Producer Licensing Act, N.J.S.A. 17:22A-1 to 25, which governed producer conduct prior to November 4, 2002, is MODIFIED by deletion. All violations committed by the Respondents occurred after November 4, 2002 and are governed by the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 et seq.

I further MODIFY page 20, paragraph four of the Initial Decision in which the ALJ noted that the fraudulent activity took place from 1998 to 2002. The fraudulent activity commenced in 2004 when Dover enacted the ordinance which raised the combined single limit liability coverage requirement for taxicab companies to \$500,000 per vehicle and such fraudulent conduct continued until at least 2006.

I further MODIFY page 19, paragraph one of the Initial Decision in which the ALJ noted that the criminal convictions of Novillo for misconduct by a corporate official, a second-degree offense, and theft by deception, a third-degree crime, further established his unworthiness...etc. Novillo was not convicted of these offenses but rather was admitted into and completed the Morris County PTI program which resulted in the dismissal of all charges against him. All Business was convicted on August 26, 2011 on 28 counts of the 2010 indictment for tampering with public records and entry of false information in violation of N.J.S.A. 2C:28-7A(1).

I further MODIFY the Initial Decision and Conclude the Respondents are guilty of the following specific violations of the New Jersey Insurance Producer Licensing Act of 2001.

Count 1.

N.J.S.A. 17:22A-40a(2), (8) and (18) and N.J.S.A. 17:22A-47b by failing to notify the Department of the 2007 Indictment within (30) days;

Count 2.

N.J.S.A. 17:22A-40a(2), (8) and (18) and N.J.S.A. 17:22a-47b by failing to notify the Department of the 2010 Indictment within thirty (30) days;

Count 3

N.J.S.A. 17:22A-40a(2), (6), (7), (8), (16), (17) and (18) by failing to notify the Department within thirty days of the July 6, 2011 guilty plea by, and the September 6, 2011 conviction of All Business on 28 counts of tampering with public records in the 3rd Degree and of Novillo's July 6, 2011 admission into PTI, and by engaging in the criminal conduct evidenced by the said conviction in violation of the State's insurance laws, for which, pursuant to N.J.S.A. 17:22A-32b(2) Novillo is responsible as the DLRP of All Business;

Count 4

N.J.S.A. 17:22A-40a(2), (8) and (15) by Novillo completing applications for the renewal of his insurance producer license on or about April 1, 2009 and April 1, 2011, and on both applications falsely responding "no" to the question which asked if he had been charged with committing a crime since either his last renewal or his initial insurance producer license application;

Count 5

N.J.S.A. 17:22A-40a(2), (8) and (15) by Novillo, as its DLRP, completing applications on or about June 1, 2009 and June 1, 2011 for the renewal of the organizational insurance producer license of All Business and on both applications falsely responding "no" to the question

which asked if it or any of its members had ever been charged with or convicted of committing a crime since either its last renewal or its initial insurance producer license application; and

Count 6

N.J.S.A. 17:22A-40a(2), (7), (8), (16) and (17) by issuing 27 fraudulent certificates of insurance to taxi company owners for submission to the Dover town clerk.

Based upon the foregoing, I ADOPT the ALJ's Conclusion on revocation and ORDER that the insurance producer licenses of Novillo and All Business are REVOKED.

I further ORDER that the Respondents are jointly and severally assessed fines of \$330,000 for the violations I have concluded they committed, broken down as follows:

Count 1 - Failure to Report 2007 Indictment -	\$ 5,000
Count 2 - Failure to Report 2010 Indictment -	\$ 5,000
Count 3 - Failure to Report Conviction -	\$ 5,000
Count 3 - Failure to Report PTI -	\$ 5,000
Count 4 - Material Misrepresentation on Novillo's 2009 License Renewal -	\$ 10,000
Count 4 - Material Misrepresentation on Novillo's 2011 License Renewal -	\$ 10,000
Count 5 - Material Misrepresentation on All Business' 2009 License Renewal -	\$ 10,000
Count 5 - Material Misrepresentation on All Business' 2011 License Renewal -	\$ 10,000
Count 6 – (Amended OTSC) for the creation and issuance of 27 false Certificates of Insurance showing \$500,000 in insurance coverage -	<u>\$270,000</u>
Total Fines -	\$330,000

I ADOPT the ALJ's directive that Respondents reimburse the Department for its costs for investigation and prosecution and ORDER that such costs be assessed jointly and severally against both Respondents in the total amount of \$1,800, in accordance with N.J.S.A. 17:22A-45c.

IT IS HEREBY ORDERED on this 10th day of July, 2014 that the Initial Decision of the ALJ is ACCEPTED in part and MODIFIED in part as set forth herein.



Kenneth E. Kobylowski
Commissioner

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