ORDER NO.: E16-18

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DOCKET NO.: BKI-08087-14
AGENCY DOCKET NO.: OTSC #E14-54

RICHARD J. BADOLATO, ACTING COMMISSIONER, NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE,	)	
Petitioner,	)	FINAL DECISION AND ORDER
v.	)	
ROBERT HAGAMAN, HAGAMAN FINANCIAL GROUP, HAGAMAN INSURANCE GROUP, AND THE MEDICARE INSURANCE STORE, LLC,	)	
Respondents.	)	

This matter comes before the Commissioner of Banking and Insurance ("Commissioner")[1] pursuant to the authority of N.J.S.A. 52:14B-1 et seq., N.J.S.A. 17:1-15, the New Jersey Producer Licensing Act of 2001 ("Producer Act"), N.J.S.A. 17:22A-26 et seq., and all powers expressed or implied therein, for the purposes of reviewing the August 11, 2015 Order for Partial Summary Decision ("Partial Summary Decision" or "PSD") of Chief Administrative Law Judge Laura Sanders ("ALJ"), which granted in part and denied in part a Motion for Summary Decision brought by the Department of Banking and Insurance ("Department"), and the November 2, 2015 Initial Decision ("November 2, 2015 Initial Decision"), (collectively referred to as the "Initial Decision").

[1] Pursuant to R. 4:34-7, Acting Commissioner, Richard J. Badolato, has been substituted as the current Commissioner in the caption.

In the Partial Summary Decision, the ALJ granted summary decision to the Department against Respondents Robert Hagaman ("Hagaman"), Hagaman Insurance Group ("Hagaman Insurance"), and the Medicare Insurance Store, LLC ("the Medicare Store"), (collectively "Respondents") on Counts Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Twelve, and Fourteen of the Department's Order to Show Cause No. E114-54 ("OTSC") and recommended revocation of Respondents' producer licenses and the imposition of civil monetary penalties against Respondent Hagaman, individually, in the amount of $62,500, Respondents Hagaman and Hagaman Insurance, jointly and severally, in the amount of $80,000[2], and Respondents Hagaman, Hagaman Insurance, and the Medicare Insurance Store, jointly and severally, in the amount of $10,000, and costs of investigation against Respondents Hagaman and Hagaman Insurance, jointly and severally, in the amount of $1,400.

In the November 2, 2015 Initial Decision, the ALJ ordered, pursuant to an October 27, 2015 request from the Department, that Counts One, Eleven, and Thirteen be withdrawn. In addition, the ALJ ordered that the Partial Summary Decision was fully incorporated in the November 2, 2015 Initial Decision, and both comprise the Initial Decision.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On May 5, 2014, the Department issued the OTSC against Hagaman, Hagaman Financial Group[3], Hagaman Insurance, the Medicare Store, and Jovani Morales ("Morales")[4], which

[2] Although in the "Order" part of the PSD on page 24 it states that the penalty totals $70,000, this appears to be a mathematical error because the actual total of the penalties recommended by the ALJ against Hagaman and Hagaman Insurance is $80,000. See PSD at 21-22.

[3] While the OTSC was issued to Hagaman Financial Group, in addition to the remaining Respondents, the OTSC contains no allegations relating to Hagaman Financial Group. As such, this Final Decision and Order does not address findings, determinations, or conclusions that relate to Hagaman Financial Group.

[4] Although the OTSC includes Morales in Count Eleven and Fifteen, Morales failed to answer to the OTSC and the Commissioner issued Final Order No. E14-80 in regards to Morales on July 15, 2014. As such, Morales is not part of the proceedings that are the subject of the Initial Decision or this Final Decision and Order.

sought to revoke their insurance producer licenses, and impose civil monetary penalties and costs of investigation for alleged violations of the Producer Act and the regulations governing the conduct of insurance producers in this State. The OTSC contains fifteen counts[5], wherein the Department alleges that Hagaman, Hagaman Insurance, and the Medicare Store engaged in activities that are a violation of the insurance laws of this State as follows.

> Count Two[6]- Hagaman misled a consumer to transfer $46,200 to Hagaman's personal account, failed to remit the payments to an insurer, and converted and misappropriated the funds for his own use, in violation of N.J.S.A. 17:22A-40a(2), (4), (5), (8), and (16), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a) and (b), and N.J.A.C. 11:17C-2.2(a);
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> Count Three - Hagaman and Hagaman Insurance forged an insurer's name to a document related to an insurance transaction, in violation of N.J.S.A. 17:22A-40a(2), (8), (10), and (16);
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> Count Four - Hagaman misled a consumer to invest in an annuity policy, failed to remit the payments to an insurer, and converted and misappropriated the funds for his own use, in violation of N.J.S.A. 17:22A-40a(2), (4), (5), (8), and (16), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a) and (b), and N.J.A.C. 11:17C-2.2(a);
>
> Count Five - Hagaman and Hagaman Insurance forged an insurer's name to a document related to an insurance transaction, in violation of N.J.S.A. 17:22A-40a(2), (5), (8), (10), and (16);
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> Count Six - Hagaman and Hagaman Insurance misled a consumer to write a check for an annuity contract, failed to remit the payments to an insurer, and converted and misappropriated the funds for the producer's own use, in violation of N.J.S.A. 17:22A-40a(2), (4), (5), (8), and (16), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a) and (b), and N.J.A.C. 11:17C-2.2(a);

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[5] While the ALJ noted on page 2 of the Partial Summary Decision that the OTSC lists twenty counts, this appears to be a typographical error as only fifteen counts were alleged in the OTSC. Further, as Count Fifteen only relates to Morales, and as the Commissioner issued Final Order No. E14-80 in regards to Morales, Count Fifteen is not addressed in this Final Decision and Order.

[6] As noted above, the Department withdrew Counts One and Thirteen; thus, those Counts are not addressed in this Final Decision and Order. Count Eleven was also withdrawn and is not addressed herein, however, certain findings of fact in the Initial Decision as to this count are included in this Final Decision and Order as they provide the factual basis for findings related to Hagaman and the Medicare Store's failure to supervise as alleged in Count Twelve.

Count Seven - Hagaman and Hagaman Insurance forged another's name to a document related to an insurance transaction, in violation of N.J.S.A. 17:22A-40a(2), (5), (8), (10), and (16);

Count Eight - Hagaman and Hagaman Insurance misled a consumer to write two checks for an annuity policy, failed to timely remit the payments to an insurer, and misappropriated and converted the funds for the producer's own use, in violation of N.J.S.A. 17:22A-40a(2), (4), (5), (8), and (16), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a) and (b), and N.J.A.C. 11:17C-2.2(a);

Count Nine - Hagaman and Hagaman Insurance misled a consumer to write two checks for an annuity policy, failed to timely remit the payments to an insurer, and misappropriated and converted the funds for the producer's own use, in violation of N.J.S.A. 17:22A-40a(2), (4), (5), (8), and (16), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a) and (b), and N.J.A.C. 11:17C-2.2(a);

Count Ten - Hagaman opened and owned three bank accounts in which insurance premium funds were deposited that were not designated as "Trust Account" and that were under business names not licensed or registered with the Department,[7] in violation of N.J.S.A. 17:22A-36, N.J.S.A. 17:22A-40a(2), (8), and (16), N.J.A.C. 11:17-2.7(a), and N.J.A.C. 11:17C-2.3 (a) and (b);

Count Twelve - Hagaman, the sole owner and designated responsible licensed producer ("DRLP") of the Medicare Store, failed to supervise an employee who was not a licensed agent for a plan, but who met with consumers and attempted to sell that plan to them and misrepresented the terms of the plan, in violation of N.J.S.A. 17:22A-40a(2) and (8), N.J.A.C. 11:17-2.9(b)4, and N.J.A.C. 11:17A-1.6(c); and

Count Fourteen - Hagaman failed to respond to a Department request for appearance, in violation of N.J.S.A. 17:22A-40a(2) and N.J.A.C. 11:17A-4.8.

[7] While Count Ten of the OTSC alleges and Hagaman admitted in his Answer to the OTSC that Hagaman operated a total of three bank accounts, two with Wachovia Bank and one with TD Bank, that were not filed with or approved by the Department and that were not designated trust accounts, the Department, in its Motion for Summary Decision, only argues that Hagaman operated two bank accounts, one Wachovia Bank account under the name "Robert W. Hagaman DBA American Investments" and one TD Bank account under the name "RTW American Investors LLC." It is unclear from the record why the Department failed to address the second Wachovia Bank account under the name "American Investors."

On May 29, 2014, Respondents filed an Answer to the OTSC, wherein the Respondents admitted to and denied some of the allegations set forth in the OTSC and requested a hearing. The Department transmitted the matter as a contested case to the Office of Administrative Law ("OAL") on June 27, 2014, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

On April 20, 2015, the Department moved for Summary Decision against the Respondents, which was opposed by the Respondents in a letter brief filed on May 20, 2015. By letter dated May 26, 2015, the Department submitted its reply to the Respondents' opposition. On August 11, 2015, the ALJ granted summary decision on Counts Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Twelve, and Fourteen as alleged in the OTSC and recommended revocation of Respondents' producer licenses and the imposition of civil monetary penalties against Respondent Hagaman, individually, in the amount of $62,500, Respondents Hagaman and Hagaman Insurance, jointly and severally, in the amount of $80,000, and Respondents Hagaman, Hagaman Insurance, and the Medicare Store, jointly and severally, in the amount of $10,000, and costs of investigation against Respondents Hagaman and Hagaman Insurance, jointly and severally, in the amount of $1,400.

In a letter dated October 27, 2015, the Department requested that Counts One, Eleven, and Thirteen of the OTSC be voluntarily withdrawn as the Department learned that two of the three complainants for Counts One, Eleven, and Thirteen are now deceased and the Department was unable to contact the remaining complainant. Pursuant to this request, the ALJ, in the November 2, 2015 Initial Decision, ordered that Counts One, Eleven, and Thirteen be withdrawn, and that the Partial Summary Decision dated August 11, 2015 be fully incorporated therein.

SUMMARY DECISION STANDARD

Pursuant to N.J.A.C. 1:1-12.4(b), the ALJ noted that a motion for summary decision requires analysis of whether "the papers and discovery which have been filed, together with affidavits, if any, show that there is no genuine issue as to any material fact." PSD at 2. Further, N.J.A.C. 1:1-12.5(b) provides that if there is no genuine issue as to a material fact, the issue is then whether "the moving party is entitled to prevail as a matter of law." Ibid. The ALJ further noted that N.J.A.C. 1:1-12.5(b) also provides that an adverse party must respond to a motion for summary decision by affidavit, which sets forth specific facts showing that there is a genuine issue that can only be determined in an evidentiary hearing. Id. at 2-3. The ALJ stated that the New Jersey Supreme Court has explained that when deciding a motion for summary judgment under R. 4:46-2,

> a determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials present, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged dispute issue in favor of the non-moving party.

Id. at 3 (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)).

The ALJ further noted that the Respondents, in answering the OTSC, admitted some facts, but not others. Id. at 3. As such, the ALJ noted that the "establishment of facts rests entirely upon the competent evidential materials presented by [the Department]." Ibid.

ALJ'S FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS

The ALJ found the following relevant facts in her grant of summary decision. Between 2005 and 2014,[8] Respondent Hagaman was licensed as a New Jersey insurance producer and was

[8] The ALJ noted that Hagaman was a licensed insurance producer in New Jersey between 2005 and 2014, the time period in which the conduct alleged in the OTSC occurred. Hagaman continues to be licensed as an insurance producer in New Jersey.

the sole DRLP for Hagaman Financial, Hagaman Insurance, and the Medicare Store, all of which were New Jersey licensed producer business entities. Id. at 3.

Counts Two and Four (Hagaman) & Three and Five (Hagaman and Hagaman Insurance): Misled Consumer JN; Failure to Remit Funds; Conversion and Misappropriation of Funds; and Fraud

Counts Two through Five of the OTSC relate to Hagaman's transactions with consumer JN. The ALJ noted that Counts Two through Five of the OTSC allege that Hagaman persuaded JN to liquidate existing investments and transfer monies to Hagaman's personal accounts where he misappropriated the funds; Hagaman and JN agreed that JN should provide further funds for an annuity policy which funds were deposited into one of Hagaman's accounts where he misappropriated the funds; and Hagaman and Hagaman Insurance sent two fraudulent letters to JN concerning the funds and purported annuity policy. Id. at 4-5.

The ALJ noted that during a telephone interview with Department investigator, Eugene Shannon, JN stated that she had been doing business with Hagaman for several years when he approached her about a third investment. Ibid. In order to make the new investment, JN stated that she took money from earlier annuities, and did not think about the investment again until she realized that she was not receiving an annual statement. Ibid.

Records from Sun Life Assurance Company[9] show that on September 17, 2008, JN executed requests to liquidate two existing Sun Life annuities in the amounts of $26,000[10] and $19,500, for a total of $45,500[11]. Ibid. Additionally, the records show that JN requested that the

[9] While the ALJ stated in the Partial Summary Decision that the forms contained as Exhibits BB and CC in the Ritardi Certification were from "Sun Life Assurance Company," the forms state that the documents are "Sun Life Financial" forms and the completed form should be returned to "Sun Life Assurance Company of Canada (U.S.)." See Ritardi Cert., Ex. BB and CC.

[10] The amount withdrawn from JN's Sun Life first annuity was actually in the amount of $26,700. See Ritardi Cert., Ex. BB.

[11] Total amount of both of JN's Sun Life Annuities was $46,200. See Ritardi Cert., Ex. BB and CC.

total amount be wired to an account named "American Investment"[12] at Wachovia Bank. Ibid. The September 2008 Wachovia Bank statement for the account named "Robert W. Hagaman, DBA American Investments" shows these two transfers on September 25, 2008. Ibid. Further, on October 6, 2008, Hagaman executed a check in the amount of $60,000 that was drawn on the same Wachovia Bank account and made payable to himself. Ibid. The subpoena that was issued to Wells Fargo, which acquired Wachovia, for the business records connected with the Wachovia Bank account indicated that there were no signature cards on file. Id. at 5-6. Thereafter, on October 10, 2008, JN received a letter on American Investors letterhead, wherein it advised her that her deposit of $46,200 was earning 7 percent APR and suggested that if she needed assistance with American Investors, she should contact her adviser, Robert Hagaman. Id. at 6.

After being solicited by Hagaman again in June 2010, JN provided Hagaman with a check in the amount of $10,000 made payable to "American Investors." Ibid. JN's check was deposited into a TD Bank account named "RTW American Investors LLC." Ibid. Pursuant to a subpoena, TD Bank supplied bank records for this account showing that the sole signatory on the account was Hagaman. Ibid. Thereafter, JN received a letter dated June 15, 2010, on American Investors letterhead advising her that her deposit of $10,000 was earning 7 percent APR, providing her with a policy number, and advising her to contact Hagaman if she needed assistance from the company. Ibid. Thereafter, on June 8, 2010, Hagaman wrote a check payable to himself for $10,000 from the RTW American Investors LLC account. Ibid.

In an affidavit submitted by Mechile Adams, a compliance analyst employed by Athene Annuity and Life Insurance Company ("Athene"), it was explained that in 2013, AVIVA Life and Annuity Company ("AVIVA") was acquired by Athene; however, during the period of

[12] While JN requested to wire $26,700 to "American Investment," her request to wire $19,500 was to "American Investments." See Ritardi Cert., Ex. BB and CC.

time in question, AVIVA owned the business names of AVIVA, American Investors, and AmerUs. Id. at 5. Adams certified that the October 10, 2008 and June 15, 2010 letters on American Investors letterhead to JN were forgeries and the policy number contained in the letters is fictitious. Id. at 6. Additionally, Adams certified that when AVIVA asked Hagaman for an explanation regarding these letters, Hagaman wrote to the company and said that he "did not know why or how these could have been sent on your letter head [sic] since we are not registered with Aviva or American Investors." Ibid. Thereafter, the company issued a cease and desist letter to Hagaman, wherein it requested that Hagaman stop using the names "American Investors," or any names incorporating the words "AVIVA," "American Investors," or "AmerUs" in order to stop potential customer confusion. Ibid.

In an August 8, 2012 letter to the Department, AVIVA advised the Department that JN's daughter-in-law contacted AVIVA on September 10, 2010, and provided a photocopy of a fictitious Annual Statement that referred to a fictitious policy number for an American Investment[13] account holding $56,000. Id. at 7. In the letter, AVIVA advised that it had no record of either an application for JN or funds from her or on her behalf. Ibid. While JN's daughter-in-law provided AVIVA with a copy of JN's check that was deposited in TD Bank, NA in Cherry Hill, NJ, AVIVA maintains that it had no banking relationship with TD Bank. Ibid. The letter from AVIVA additionally provided that JN's daughter-in-law provided the company with a copy of a check in the amount of $31,500, which represented partial repayment by Hagaman, and the company indicated that the remainder of the misappropriated funds have since been repaid to JN. Ibid.

[13] While AVIVA's letter to the Department, dated August 8, 2012, notes that the policy number contained on "Annual Statement[s]" was for an "American Investment" account, a review of the October 10, 2008 and June 15, 2010 letters to JN shows that the letters provided to JN were drafted on "American Investors Life Insurance Company, Inc." letterhead and advised that JN chose "American Investments." See Ritardi Cert., Ex. EE and HH.

The ALJ found as fact that JN gave to Hagaman checks totaling $55,000[14] that JN wrote to American Investors with the intention of investing in annuities with the company generally known as "American Investors" or "AVIVA." Id. at 7. The ALJ found that Hagaman made no investments on JN's behalf as no evidence indicates that Hagaman ever invested the funds either with an insurance company or privately. Ibid. Further, the ALJ found that JN was sent forged policy letters that indicated that real investments existed with American Investors and the fake letters informed JN to call Hagaman if she needed help with the company. Ibid. Additionally, the ALJ found that shortly upon receipt of both fund transfers, Hagaman wrote checks to himself from the bank accounts where JN's funds were deposited and for amounts that equaled or exceeded the amount of JN's investments. Ibid. Lastly, the ALJ found that JN eventually received a return of her principal from Hagaman. Ibid.

Based upon the factual findings and discussion above, the ALJ found that as to Counts Two and Four of the OTSC, Respondent Hagaman's actions of holding JN's funds for approximately two years before refunding them violated N.J.S.A. 17:22A-40a(2), (4), (5), and (8), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a) and (b), and N.J.A.C. 11:17C-2.2(a). Id. at 16-17. As to Counts Three and Five, the ALJ found that Hagaman and Hagaman Insurance's actions in forging letters concerning JN's annuity constitute violations of N.J.S.A. 17:22A-40a(7), (8), (10), and (16). Id. at 16.

[14] The total amount of the checks provided to Hagaman for the purposes of a new investment for JN was actually $56,200. This includes the September 17, 2008 withdraws of JN's two Sun Life annuities in the amount of $26,700 to "American Investment," and $19,500 to "American Investments" and JN's June 8, 2010 check made payable to "American Investors" in the amount of $10,000. See Ritardi Cert., Ex. BB, CC, and FF.

Counts Six and Seven (Hagaman and Hagaman Insurance): Misled Consumer PM; Failure to Remit Funds; Conversion and Misappropriation of Funds; Fraud

Counts Six and Seven of the OTSC relate to Hagaman's transactions with consumer PM. Id. at 7. Specifically, the counts allege that Hagaman created a fraudulent annuity contract, accepted funds for investment, and then misappropriated the funds. Ibid.

In support of the allegations contained in Counts Six and Seven of the OTSC, the Department provided a copy of a receipt from PM's checkbook for $18,000 to "American Investment Co." Ibid. Additionally, the Department offered copies of PM's $18,000 check and a deposit slip from October 6, 2008, showing the $18,000 deposit into a Wachovia Bank account opened and owned by "Robert W. Hagaman DBA American Investments," and PM's name. Id. at 7, 8, and 9. Further, the Department offered an October 17, 2008 letter on American Investment Letterhead[15] that provided PM with a policy number, informed PM that his deposit of $18,000 was currently earning 14.25 percent APR, and urged him to call Hagaman should he need any assistance. Id. at 8. The letter also included a Buyer's Guide to Indexed Annuities, an American Equity Brochure, and an American Investors Certificate.[16] Ibid. The ALJ noted that American Investment has stated that the documents given to PM referencing his alleged contract with the company are fraudulent, and the October 17, 2008 letter is a forgery that contains a fictitious policy number. Ibid. Lastly, the ALJ stated that the Ritardi Certification provided that an "[e]xamination of Hagaman's Wells Fargo Bank Account record revealed that from the dates

[15] The ALJ noted that the October 17, 2008 letter to PM was on "American Investment letterhead;" however, a review of the letter shows that the letter was actually drafted on "American Investors Life Insurance Company, Inc." letterhead and advised that PM chose "American Investments." See Thomas F. Ritardi ("Ritardi") Cert., Ex. F.

[16] The ALJ noted that the certificate included in the October 17, 2008 letter was an "American Insurers certificate;" however, a review of the certificate shows that it is actually an "American Equity Investment Life Insurance Company" certificate. See Ritardi Cert., Ex. C.

September 12, 2008, through and including October 24, 2008, Hagaman wrote nine . . . checks to himself from his [Wachovia] Wells Fargo Bank Account for a total of $108,000." Id. at 9.

The ALJ noted that in a September 11, 2010 letter to the Department, Hagaman's employee, Raymond Idec ("Idec"), stated that he sold an annuity to PM and collected the application and premium check. Id. at 8. American Equity Investment Life Insurance Company ("American Equity") informed the Department that Idec worked for Hagaman Insurance, which was appointed as a agent for American Equity at one time. Ibid. However, the company stated that Idec was not an appointed agent for American Equity. Additionally, during a June 11, 2009 interview with the Department, Hagaman acknowledged that Idec handled the American Equity applications for consumers PM, MM, and RL, but Hagaman admitted that he signed the applications. Ibid. While Idec was aware in the fall of 2008 that American Equity stated that it had no account for PM, he believed that Hagaman was taking care of the issue. Ibid.

The ALJ found as fact that Hagaman accepted PM's check for $18,000, that the check was deposited into the American Investors[17] bank account, and that Hagaman wrote himself checks in the amounts such that he utilized all of the funds available from PM. PSD at 9. Further, the ALJ found that Hagaman and Hagaman Insurance sent PM false documents, which included American Investment letters[18] and a fake certificate for an annuity investment. Ibid. Lastly, the ALJ found that no investment for PM was ever made and in the spring of 2009, Hagaman returned PM's principal. Ibid.

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[17] The ALJ notes that PM's check for $18,000 was deposited into the "American Investors" bank account. However, the record reflects that PM's check was actually deposited into the Wachovia Account entitled "Robert W. Hagaman DBA American Investments." See Ritardi Cert., Ex. LL.

[18] While the documents that accompanied the letters were designated as documents from "America Equity Investment Life Insurance Company," the October 17, 2008 letter that accompanied these policy documents was drafted on "American Investors Life Insurance Company, Inc." letterhead and advised that PM chose "American Investments." See Ritardi Cert., Ex. C and F.

Based upon the factual findings and discussion above, the ALJ found that as to Counts Six and Seven of the OTSC, Hagaman and Hagaman Insurance accepted PM's check, created false letters and a false annuity certificate, and Hagaman wrote checks payable to himself in amounts that utilized all of the funds available from PM, in violation of N.J.S.A. 17:22A-40a(2), (5), (10), and (16). Id. at 17.

> Count Eight (Hagaman and Hagaman Insurance): Misled Consumer MM; Failure to Remit Funds; Conversion and Misappropriation of Funds; Fraud

Count Eight of the OTSC relates to Hagaman's interactions with consumer MM. Specifically, the OTSC alleges that Hagaman accepted funds for the purchase of an annuity, deposited the funds in an unauthorized account, and did not forward the funds and enrollment form for the annuity until six months later.

The ALJ noted that Hagaman's employee, Idec, in a letter to the Department, explained that he sold an annuity to MM in September 2008 and returned to give her a copy of the policy approximately a week later. Id. at 10. As MM wanted to know how to withdraw funds, Idec suggested they call American Equity together. Ibid. However, when the company was given MM's policy number, he was informed that the company had no record of such an account. Ibid. Idec stated that he then contacted Hagaman, who instructed him to take the policy back and return to the office immediately. Ibid. Idec stated that he believed that Hagaman was working with the company to straighten out MM's policy. Ibid.

Further, in a May 28, 2009 letter, Patricia Teclaw ("Teclaw"), service administrator for American Equity, described an April 27, 2009 phone call in which MM was advised that her annuity application, that was signed on March 25, 2009, had been reviewed and approved on April 15, 2009. Ibid. The company, however, decided to refund MM's money because the company had terminated Hagaman as a writing agent. Ibid. During this conversation, MM

explained that Hagaman did not sell her the annuity, but an employee by the name of Raymond Idec did. Ibid. Additionally, MM inquired as to why the company had held her check for six months, and the company advised MM that it did not hold her funds for the time she claimed but had received a check for $70,000 that was dated April 3, 2009. Ibid. American Equity provided the Department with a copy of an application for MM that was dated March 25, 2009, as well as a copy of the $70,000 cashier's check. Ibid.

In support of the allegations contained in Count Eight of the OTSC, the Ritardi Certification states that an "[e]xamination of Hagaman's [Wachovia] Bank Account records revealed Hagaman's deposit of check No. 125, dated September 9, 2008 . . . in the amount of $60,000 into Hagaman's [Wachovia] Bank Account." Ibid. The Ritardi Certification also references Exhibit JJ, which included a copy of MM's check and shows deposits into a Wachovia checking account held by "Robert W. Hagaman DBA American Investments." Ibid. The Ritardi Certification also notes that the $10,000 check from MM in October 2008 corresponds with a Wachovia deposit in the same amount for checking account held by "Robert W. Hagaman DBA American Investments." Ibid. Further, the Ritardi Certification maintains that based upon an examination of Hagaman's Wachovia/Wells Fargo Bank Account from September 12, 2008, through and including October 24, 2008, Hagaman wrote nine checks to himself from the bank account held by "Robert W. Hagaman DBA American Investments" for a total of $108,000. Id. at 10-11.

Lastly, in a letter dated June 19, 2009, Hagaman, Hagaman Insurance, and Idec's attorney, Matthew J. Heagen, asked MM to execute a release of claims while at the same time asserting that she has been repaid her $70,000 and promising to forward an additional $3,500 in interest. Id. at 11.

The ALJ found as fact that MM's funds were deposited into a Wachovia/Wells Fargo Bank account from which Hagaman wrote checks to himself in the amounts equal to the funds he obtained from MM. Ibid. Further, the ALJ found that several months after receiving the funds from MM, Hagaman finally forwarded her funds for investment in April 2009. Ibid.

Based upon the findings of fact and discussion above, the ALJ found that as to Count Eight of the OTSC, Hagaman and Hagaman Insurance solicited sizeable investments from consumer MM for the purchase of American Equity annuities, held the funds for several months in an "essentially . . . private account," and sent false documents that indicated that actual enrollments had occurred, in violation of N.J.S.A. 17:22A-40a(2), (4), (5), (10), and (16), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a) and (b), and N.J.A.C. 11:17C-2.2(a). Id. at 17.

> Count Nine (Hagaman and Hagaman Insurance): Misled Consumer RL; Failure to Remit Funds; Conversion and Misappropriation of Funds

Count Nine of the OTSC relates to Hagaman's interactions with consumer RL. Specifically, the OTSC alleges that Hagaman held funds of RL for several months before forwarding them to American Equity. Ibid.

The ALJ noted that Idec indicated that he sold an annuity to RL in September 2008. Id. at 12. When he discovered that there was a problem with MM's annuity, Idec tried to contact American Equity; however, the same issue that occurred with MM's annuity in Count Eight occurred with regard to the annuity sale to RL. Ibid. He stated that Hagaman assured him that Hagaman would personally take care of the matter. Ibid.

Further, Teclaw's May 28, 2009 letter to the Department stated that RL told an American Equity representative that he met with Idec and that Idec and Hagaman had held his money for a period of seven months. Ibid. American Equity provided the Department with a copy of a

cashier's check in the amount of $26,000 that was dated for April 1, 2009 and remitted by "American Investors" on behalf of RL. Ibid.

The ALJ further noted that the Department's evidence includes Wachovia Bank records that included copies of RL's September 23, 2008 check in the amount of $26,000, a record of the deposit made into the Wachovia Bank account, and a record of personal checks made out to Hagaman from the same account, which totaled enough funds to absorb all of RL's $26,000 investment. Ibid. The ALJ found as fact that Hagaman deposited funds from RL in September 2008, utilized the funds for other purposes, and then finally forwarded the funds to American Investment on April 1, 2009. Ibid.

Based upon the findings of fact and discussion above, the ALJ found that as to Count Nine of the OTSC, Hagaman and Hagaman Insurance solicited sizeable investments from consumer RL for the purchase of American Equity annuities, held the funds for several months in an "essentially . . . private account," and sent false documents that indicated that actual enrollments had occurred, in violation of N.J.S.A. 17:22A-40a(2), (4), (5), (10), and (16), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a) and (b), and N.J.A.C. 11:17C-2.2(a). Id. at 17.

Count Ten (Hagaman): Failure to Deposit Funds in Trust Account and Conduct of Insurance Business under Unauthorized Names

ALJ noted that Count Ten of the OTSC alleges that Hagaman failed to utilize premium trust fund accounts for the deposit of insurance premiums for consumers JN, PG, RL, and MM, and failed to conduct business under insurance names that were filed with and approved by the Department. Id. at 12.

The ALJ stated that the Respondents admit that Hagaman opened and owned two Wachovia Bank accounts bearing the names "American Investors" and "Robert W. Hagaman DBA American Investments" and that he opened and owned a TD Bank account bearing the

name "RTW American Investors LLC." Ibid. The Respondents also admitted that none of the names on these accounts were business names that were licensed or registered with the Department. Ibid. Further, the ALJ found that the Department set forth extensive evidence concerning the Respondents' multiple deposits of consumers' annuity investments into the Wachovia/Wells Fargo and TD Bank accounts, and Hagaman's personal use of those funds. Id. at 13.

The ALJ found as fact that Hagaman opened and owned two Wachovia/Wells Fargo bank accounts and a TD Bank account that he utilized for the deposit of premiums, even though none of the accounts were under business names that were filed and approved by the Commissioner. PSD at 13. The ALJ further found that the names "American Investors" and "Robert Hagaman DBA American Investments" were close enough to the names owned by AVIVA to cause confusion for consumers. Ibid.

Based upon the findings of fact and discussion above, the ALJ found that as to Count Ten of the OTSC, Hagaman deposited insurance funds that were intended as investments in annuities into the Wachovia/Wells Fargo and TD Bank accounts, and those accounts were not premium trust accounts and were not filed under business names filed and approved by the Commissioner, in violation of N.J.S.A. 17:22A-40a(2), (8), and N.J.S.A. 17:22A-39. Id. at 17-18. The ALJ also found that the names on the accounts were the subject of a cease and desist letter from a company that held the rights to the name "American Equity,"[19] on the grounds that it would cause confusion to consumers, in violation of N.J.S.A 17:22A-40a(16). Id. at 18. Lastly, the

[19] The August 18, 2011 cease and desist letter that the ALJ references was not from a company that held the rights to "American Equity." The company that sent the cease and desist letter to Hagaman was AVIVA, and in said letter, AVIVA prohibited Hagaman's use of the name "'American Investors' or any other name incorporating the words 'Aviva,' 'American Investors,' 'AmerUS,' and/or any use of Aviva's marks as it may create consumer confusion regarding the status of [Hagaman's] relationship with Aviva." See Mechile Adams Cert., Ex. G.

ALJ found that Hagaman's actions, as alleged in Count Ten of the OTSC, were also violations of N.J.A.C. 11:17-2.8. Ibid.

Count Twelve (Hagaman and The Medicare Store): Failure to Supervise

The ALJ noted that Count Twelve of the OTSC alleges that Respondents Hagaman and the Medicare Store had a duty to properly supervise an employee, Morales, and were therefore responsible for Morales's conduct. PSD at 13.

The ALJ noted that the parties agree that Hagaman was the sole owner and DRLP for the Medicare Store, and from approximately July 2012 through February 6, 2013, Hagaman was licensed as an agent for Geisinger Health Plan ("Geisinger"), a Health Maintenance Organization. Ibid. The parties also agree that Morales was not licensed as an agent for Geisinger. Ibid.

Further, Hagaman stated in a March 12, 2013 letter to the Department that Morales solicited the appointment with consumers AT and VT and wrote the consumers "into the Geisinger not realizing that he was not appointed with Geisinger to sell their products." Ibid. Hagaman stated that upon realizing this, Morales had one of the administrators use Hagaman's signature stamp to sign the application, and the administrator also used the wrong agent code for the application. Ibid. Hagaman further stated that the actions of Morales and the administrator lead to their employment being terminated. Ibid.

Moreover, Dudly Gerow ("Gerow"), Geisinger's chief government program officer, in his certification stated that Hagaman told Geisinger that Morales was not licensed to sell, was only used on an emergency basis, fielded phone calls, and was sent to pick up applications. Id. at 14. Gerow stated that the applications for AT and VT, which were submitted to the Geisinger on December 31, 2012 and contained Hagaman's signature, were submitted under the broker

number of Natalie Aziz, an employee of Hagaman. Ibid. Gerow further noted that the initial application's Scope of Appointment must be signed by the agent or broker who actually made the presentation to the consumer. Ibid. Gerow's Certification also notes that AT complained to Geisinger that Morales informed them that they could use original Medicare out-of-network under the Geisinger plan, which was incorrect, and Morales was surprised about the fact that Geisinger enrollees could not do so under the plan. Ibid.

As to Count Twelve of the OTSC, the ALJ found that Hagaman and the Medicare Store employed Morales and Aziz in some capacity and that AT and VT were given incorrect information about the health plan by Morales. Id. at 14 The ALJ found that Hagaman and the Medicare Store, despite having learned from Geisinger that Morales had misrepresented himself, failed to report the actions to the Commissioner until after the Commissioner began an investigation, in violation of N.J.S.A. 17:22A-40c and N.J.S.A. 17:22A-40a(2). Id. at 18.

Count Fourteen (Hagaman): Failure to Appear

The ALJ noted that in response to the Department's letter to Hagaman, wherein the Department requested his appearance, counsel for Hagaman responded via telephone. PSD at 14. However, no meeting occurred. Id. at 14. The ALJ stated that there is no actual factual dispute regarding whether Hagaman appeared at this meeting. Id. at 15.

Based upon the findings above, the ALJ found that as to Count Fourteen of the OTSC, Hagaman failed to appear at the Department following a request for him to do so, in violation of N.J.S.A. 17:22A-40a(2) and N.J.A.C. 11:17A-4.8. Id. at 19.

ALJ'S FINDINGS AS TO THE PENALTY AGAINST RESPONDENTS

The ALJ determined that the imposition of civil monetary penalties, costs, and the revocation of the Respondents' insurance producer licenses were appropriate in this matter. The

ALJ noted that pursuant to the Producer Act, the Commissioner has the power to revoke or refuse to renew a license or to levy a civil penalty for any of several causes, which include "(8) [u]sing fraudulent, coercive or dishonest practices, or demonstrating . . . untrustworthiness or financial irresponsibility in the conduct of insurance business in this State" or "(16) [c]ommitting any fraudulent act." PSD at 19 (quoting N.J.S.A. 17:22A-40a(8) and (16)). The ALJ further noted that pursuant to N.J.S.A. 17:22A-45c, civil monetary penalties shall not exceed $5,000 for the first offense and $10,000 for each subsequent offense. Ibid.

The ALJ further noted that the State of New Jersey has a strong public policy against the proliferation of insurance fraud (citing Palisades Safety and Ins. Ass'n v. Bastien, 175 N.J. 144, 150 (2003)). Id. at 23. Further, in almost all cases where a licensed insurance producer has committed insurance fraud, revocation has been deemed appropriate (citing Fortunato v. Brenner, 92 N.J.A.R.2nd (INS) 73). Ibid. Only the rarest of mitigating factors will preclude license revocation for those who directly commit fraud (citing Commissioner v. Goncalves, OAL Dkt. No. BKI 31188-03, Initial Decision (12/03/03), Final Decision and Order (05/24/04), OAL Dkt. No. BKI 3301-05, On Remand, Initial Decision (11/17/05), Final Decision and Order (02/15/06)). Id. at 24.

Moreover, the ALJ noted that principal insurance producers and insurance producer business entities are liable for the conduct of their agents. Id. at 23. N.J.S.A.17:22A-40c provides that an insurance producer license of a business entity may be suspended, revoked, or refused if the Commissioner finds that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the business entity, and the violation was neither reported to the Commissioner nor was corrective action taken. Ibid.

The ALJ noted that Respondents have pleaded for suspension, rather than revocation, or at the very least, time within which the Respondents may find a third-party buyer for the business before revocation takes effect. Ibid. The Respondents stated that revocation does not provide incentives for producers, such as the Respondents, who act to remedy financial losses to victims by providing restitution prior to being ordered to do so, which reduces the need for public expenditures of administrative costs. Ibid. The ALJ noted, however, that the Respondents provided senior citizens with fake insurance documents and promised them substantial rates of return while no annuity investment existed. Ibid. The ALJ found that the actions of the Respondents are egregious and demand revocation. Ibid.

The ALJ noted that the standards for determining the appropriateness of civil monetary penalties should be discussed as set forth in Kimmelman v. Henkles & McCoy, Inc., 108 N.J. 123, 137-39 (1987). PSD at 19. These factors include: (1) the good faith or bad faith of the producer; (2) the producer's ability to pay; (3) the amount of profits obtained from the illegal activity; (4) injury to the public; (5) duration of the illegal activity or conspiracy; (6) existence of criminal actions or treble-damages actions; and (7) past violations. Ibid.

With regard to the first factor, the ALJ noted that the Department showed that in at least four instances, Hagaman and Hagaman Insurance committed fraud through the creation of fake insurance documents, which shows bad faith. Ibid. Additionally, the ALJ noted that the bank accounts used to deposit consumers' monies that were intended for investments also suggest bad faith. Ibid. The ALJ noted that the bank accounts imply that a consumer's funds would be properly deposited in a trust account for the purpose intended and not commingled with other funds and then used for other, unintended purposes. Ibid.

As to the second factor, the ALJ stated that the Department offered no proofs as to the Respondents' ability to pay; however, the Department maintains that the Respondents should have the ability to pay because the Respondents were successful insurance producers. Ibid.

The ALJ noted that, as to the third factor, there is no record of the profit the Respondents obtained from their actions; however, the Department showed that approximately $161,000[20] in premium monies were misappropriated and utilized by the Respondents for varying periods of time. Ibid. at 20.

Further, the ALJ stated that factor four, injury to the public, is one of the primary sources of dispute in regard to a penalty. Ibid. The ALJ notes that the Department argues that "[w]hen insurance producers breach their fiduciary duties and engage in fraudulent practices and unfair trade practices, the affected insurance consumers are financially harmed and the public's confidence in the insurance industry as a whole is eroded." Commissioner v. Fonseca, OAL Dkt. BKI 11979-10, Initial Decision (08/15/11), Final Decision and Order (12/28/11). However, the Respondents state that Hagaman made voluntary restitution to the various consumers before litigation occurred, and argue that the harshest penalties should be reserved for those who have to be forced to make restitution. PSD at 20.

With regard to the fifth factor, the ALJ noted that the Respondent's actions at issue continued for a period of over five years, which began in September 2008, when JN first wired funds to the American Investors[21] account, and ended on December 31, 2013, when the Geisinger application for AT and VT was received. Ibid.

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[20] The total amount actually misappropriated from consumers JN ($56,200), PM ($18,000), MM ($70,000), and RL ($26,000) is $170,200.

[21] JN's transfers of her Sun Life annuities were deposited into a Wachovia Bank account under the name "Robert W. Hagaman DBA American Investments." Thereafter, JN's $10,000 investment was deposited into the TD Bank account under the name "RTW American Investors LLC." See Ritardi Cert., Ex. Z and EE.

The ALJ notes that in relation to factor six, no treble damages or criminal actions were involved; however, the Department argued that in Kimmelman, the Supreme Court held that a lack of criminal punishment weighs in favor of higher civil penalties, because the defendant was not punished for the unlawful conduct. Ibid.

Lastly, the ALJ noted that there is one prior violation against Hagaman for conducting insurance business using a name that not filed with or approved by the Commissioner. Ibid. The ALJ stated that on May 13, 2011, Hagaman signed a Consent Order, wherein he admitted to sending 3,400 mailers to senior citizens between April 27, 2008 and June 6, 2008, using the name "The Medicare Insurance Store, LLC," which was then not filed with the Department. Id. at 20-21. Hagaman paid a $1,000 fine, and the Department maintains that the fine did not deter Hagaman because he continued to use unapproved names. Id. at 21.

The ALJ stated that the Department sought $10,000 for each of the twenty separate violations contained in the OTSC. Ibid. Additionally, the Department argued that the $1,000 fine in 2011 allows for the $10,000 penalty for each violation of the Producer Act. Ibid.

Based upon the above analysis, the ALJ recommended the following fines for each count. As to Count Two of the OTSC, the misrepresentation of the sale of an annuity and the conversation of JN's funds for Hagaman's personal use for a period of time warrants a civil monetary penalty of $10,000[22] against Hagaman, individually. Ibid.

[22] The intended amount of penalty assessed is unclear. The Initial Decision states: "With regard to Count Two, the Department argues that the $1,000 fine in 2011 opens the door to the second-level penalty of $10,000 for every subsequent violation of the Act, and that the misrepresentation of the sale of an American Investor annuity and the conversion of JN's funds to his own use for a period of time each warrants a penalty of $10,000. As these are both very serious violations, I CONCLUDE that each does merit that penalty." PSD at 21. This suggests a $20,000 fine. However, the total amount of fines as stated by the ALJ ($152,500) add up only if the fine is $10,000 for Count Two. Moreover, the Department requested a $10,000 fine for Count Two. See Department's Brief in Support of the Motion for Summary Decision.

As to Count Three of the OTSC, sending a forged letter on American Investors letterhead to JN warrants a civil monetary penalty of $10,000 against Hagaman and Hagaman Insurance, jointly and severally. Ibid.

As to Count Four of the OTSC, fraudulently soliciting JN for a second time warrants a civil monetary penalty of $10,000 against Hagaman, individually. Ibid.

As to Count Five of the OTSC, sending a second forged letter on American Investors letterhead to JN warrants a civil monetary penalty of $10,000 against Hagaman and Hagaman Insurance, jointly and severally. Ibid.

As to Count Six of the OTSC, Hagaman's conversion of PM's funds and Hagaman and Hagaman Insurance providing PM with fake insurance documents warrants a civil monetary penalty of $10,000 for each of the two violations, for a total of $20,000 against Hagaman and Hagaman Insurance, jointly and severally. Ibid.

As to Count Seven of the OTSC, Hagaman and Hagaman Insurance sending a forged letter on American Investors letterhead to PM warrants a civil monetary penalty of $10,000 against Hagaman and Hagaman Insurance, jointly and severally. PSD at 21.

As to Count Eight of the OTSC, Hagaman and Hagaman Insurance's two solicitations of MM, their holding of MM's funds for longer than five days in an account that was not designated as a trust account, and providing fake insurance records to MM warrants a civil monetary penalty of $10,000 for each of the two violations, for a total of $20,000 against Hagaman and Hagaman Insurance, jointly and severally. Id. at 22.

As to Count Nine of the OTSC, Hagaman and Hagaman Insurance's solicitation of funds from RL and holding the funds for more than five days in an account that was not designated as a trust account warrants a penalty of $10,000 against Hagaman and Hagaman Insurance, jointly and severally. Ibid.

As to Count Ten of the OTSC, Hagaman operating bank accounts under the names "RTW American Investors, LLC" and "Robert W. Hagaman DBA American Investments" that were not approved by the Commissioner and were similar enough to cause consumer confusion warrants a penalty of $10,000 for each name, for a total of $20,000 against Hagaman, individually. Additionally, Hagaman depositing premium monies in each account when neither account was a trust account also merits a civil monetary penalty of $10,000 for each account, for a total of $20,000 against Hagaman, individually. Ibid.

As to Count Twelve of the OTSC, Hagaman and the Medicare Store, as the employers of Morales, were responsible for Morales's conduct in soliciting consumers for a product he was not licensed to sell warrants a civil monetary penalty of $10,000 against Hagaman, Hagaman Insurance[23], and the Medicare Store, jointly and severally. Ibid.

As to Count Fourteen of the OTSC, Hagaman's failure to attend a meeting with the Department warrants a civil monetary penalty of $2,500 against Hagaman, individually. Ibid.

Thus, the ALJ recommended total fines of $152,500 allocated as follows: $62,500 against Respondent Hagaman, individually, $80,000 against Respondents Hagaman and Hagaman Insurance, jointly and severally, and $10,000 against Respondents Hagaman, Hagaman Insurance, and the Medicare Store, jointly and severally. Ibid.

The ALJ also concluded that an award of costs of investigation in the amount of $1,400 against the Respondents Hagaman and Hagaman Insurance, jointly and severally, was appropriate.

As the ALJ concluded that Counts One, Eleven, and Thirteen warranted a hearing and were not appropriate for summary decision, the ALJ made no recommendations for civil

[23] Hagaman Insurance is named as liable for this penalty amount in the "Order" portion of the PSD at 24. However, Hagaman Insurance was not alleged to have committed any violations in Count Twelve of the OTSC, and is not included in the discussion portion of the PSD at 22.

monetary penalties relating to these Counts. Further, in the November 2, 2015 Initial Decision, the ALJ granted the Department's request to withdraw Counts One, Eleven, and Thirteen.

EXCEPTIONS

Neither the Department nor the Respondents submitted Exceptions to the Initial Decision. However, by letter dated November 10, 2015, the Office of the Attorney General, on behalf of the Department, stated that "[t]he Department agrees with all parts of the Initial Decision, including the incorporated Order of Partial Summary Decision, dated August 11, 2015," and would not be filing exceptions.

LEGAL DISCUSSION

As concluded by the ALJ, the Department bears the burden of proving the allegations in an Order to Show Cause by a preponderance of the competent, relevant, and credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962) and In re Polk, 90 N.J. 550, 560 (1982). The evidence must be such as would lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Preponderance may be described as: "the greater weight of credible evidence in the case not necessarily dependent on the number of witnesses, but having the greater convincing power." State v. Lewis, 678 N.J. 47 (1975).

Allegations Against Respondents

For all of the reasons set forth in the Initial Decision, I concur that summary decision is appropriate as to Counts Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Twelve, and Fourteen of the OTSC issued against the Respondents. As found by the ALJ, Respondents failed to adduce evidence that creates a genuine issue as to any material fact and their defenses as pled fail as a matter of law. The Department is, therefore, entitled to prevail as a matter of law. As

the Department withdrew Counts One, Eleven, and Thirteen of the OTSC, I make no determinations or conclusions as to these Counts.

Count Two

Count Two of the OTSC alleges that Respondent Hagaman mislead consumer JN into transferring monies to Hagaman's personal account, failed to remit the payments to an insurer, and converted and misappropriated the funds for Hagaman's personal use, in violation of N.J.S.A. 17:22A-40a(2), (4), (5), (8), and (16), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a) and (b), and N.J.A.C. 11:17C-2.2(a). I concur with the ALJ that the Department proved the allegations in Count Two of the OTSC, and I FIND that Hagaman's actions, as alleged in Count Two of the OTSC, violated N.J.S.A. 17:22A-40a(2) (violating any insurance law or regulation), (4) (prohibiting the improper withholding, misappropriating, or converting of any monies received in the course of doing insurance business), (5) (intentionally misrepresenting the terms of an actual or proposed insurance contract, policy, or application for insurance), and (8) (demonstrating untrustworthiness), N.J.A.C. 11:17A-4.10 (requires an insurance producer to act in a fiduciary capacity in the conduct of his or her insurance business), N.J.A.C. 11:17C-2.1(a) (prohibiting misappropriation and conversion of funds to insurance producer's own use) and (b) (prohibiting commingling of funds), and N.J.A.C. 11:17C-2.2(a) (premium funds shall be remitted to the insurer within five business days after receipt of the funds).

However, the ALJ made no determination as to whether the conduct as alleged by the Department in Count Two of the OTSC was a violation of N.J.S.A. 17:22A-40a(16), which prohibits an insurance producer from "[c]ommitting any fraudulent act." Here, the record shows that in September 2008, Hagaman misrepresented to JN that the funds received from the liquidation of her existing annuities would be invested in a new annuity with AVIVA. PSD at 5. However, Hagaman deposited JN's funds into a back account named "Robert W. Hagaman DBA

American Investments" and never submitted the funds to the insurer for an annuity on JN's behalf. Ibid. In fact, an examination of the Wachovia account records shows that Hagaman withdrew funds from the bank account by writing himself check on October 6, 2008 in the amount of $60,000. Ibid. Based upon these facts, the record is clear that Hagaman's actions constitute a "fraudulent act" as set forth in the Producer Act. As such, I MODIFY the Initial Decision and FIND that Hagaman's actions, as alleged in Count Two of the OTSC, are also a violation of N.J.S.A. 17:22A-40a(16).

Count Three

Count Three of the OTSC alleges that Respondents Hagaman and Hagaman Insurance forged the name of American Investors to a letter related to an insurance transaction and sent the letter to consumer JN, in violation of N.J.S.A. 17:22A-40a(2), (8), (10), and (16). I concur with the ALJ that the Department proved the allegations in Count Three of the OTSC, and I FIND that Hagaman and Hagaman Insurance's actions, as alleged in Count Three of the OTSC, violated N.J.S.A. 17:22A-40a(8) (demonstrating untrustworthiness), (10) (forging another's name to an application for insurance or to any document related to an insurance transaction), and (16) (committing any fraudulent act).

The ALJ noted that Hagaman and Hagaman Insurance's actions, as alleged in Count Three of the OTSC, were also a violation of N.J.S.A. 17:22A-40a(7), which states that an insurance producer commits a violation of the Producer Act for "[h]aving admitted or been found to have committed any insurance unfair trade practice or fraud." As the Department did not allege in the OTSC that the Respondents' actions were a violation of this statutory provision or argue same in the Department's Motion for Summary Decision, I determine that this may have been an error and the ALJ meant to find that the Respondents' actions are a violation of N.J.S.A. 17:22A-40a(2), which prohibits an insurance producer from "[v]iolating any insurance laws, or

violating any regulation, subpoena or order of the commissioner or of another state's insurance regulator," as this provision was set forth in the OTSC and the Department's Motion for Summary Decision and is supported by the ALJ's factual findings. As such, I MODIFY the Initial Decision and FIND that the Hagaman and Hagaman Insurance's actions, as alleged in Count Three of the OTSC, are a violation of N.J.S.A. 17:22A-40a(2), rather than N.J.S.A. 17:22A-40a(7).

Count Four

Count Four of the OTSC alleges that Respondent Hagaman misled consumer JN into investing in an annuity policy that did not exist, failed to remit the payments to an insurer, and converted and misappropriated the funds for Hagaman's own use, in violation of N.J.S.A. 17:22A-40a(2), (4), (5), (8), and (16), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a) and (b), and N.J.A.C. 11:17C-2.2(a). I concur with the ALJ that the Department proved the allegations in Count Four of the OTSC, and I FIND that Hagaman's actions, as alleged in Count Four of the OTSC, violated N.J.S.A. 17:22A-40a(2) (violating any insurance law or regulation), (4) (prohibiting the improper withholding, misappropriating, or converting of any monies received in the course of doing insurance business), (5) (intentionally misrepresenting the terms of an actual or proposed insurance contract, policy, or application for insurance), (8) (demonstrating untrustworthiness), N.J.A.C. 11:17A-4.10 (requires an insurance producer to act in a fiduciary capacity in the conduct of his or her insurance business), N.J.A.C. 11:17C-2.1(a) (prohibiting misappropriation and conversion of funds to insurance producer's own use) and (b) (prohibiting commingling of funds), and N.J.A.C. 11:17C-2.2(a) (premium funds shall be remitted to the insurer within five business days after receipt of the funds).

However, the ALJ made no determination as to whether the conduct, as alleged by the Department in Count Four of the OTSC, was a violation of N.J.S.A. 17:22A-40a(16), which

prohibits an insurance producer from "[c]ommitting any fraudulent act." Here, the record shows that in 2010, Hagaman solicited JN for a second time to invest an additional $10,000 into the AVIVA annuity she intended to obtain in 2008. PSD at 6. However, again, Hagaman deposited JN's funds into a back account named "RTW American Investors LLC" and never submitted the funds to the insurer for annuity on JN's behalf. Ibid. TD Bank account records show that Hagaman withdrew funds from the bank account by writing himself check on June 8, 2010 in the amount of $10,000. Ibid. Based upon these facts, the record is clear that Hagaman's actions constitute a "fraudulent act" as set forth in the Producer Act. As such, I MODIFY the Initial Decision and FIND that Hagaman's actions, as alleged in Count Four of the OTSC, are also a violation of N.J.S.A. 17:22A-40a(16).

Count Five

Count Five of the OTSC alleges that Respondents Hagaman and Hagaman Insurance forged the name of American Investors to a letter related to an insurance transaction and sent the letter to consumer JN, in violation of N.J.S.A. 17:22A-40a(2), (5), (8), (10), and (16). I concur with the ALJ that the Department proved the allegations in Count Five of the OTSC, and I FIND that Hagaman and Hagaman Insurance's actions, as alleged in Count Five of the OTSC, violated N.J.S.A. 17:22A-40a(8) (demonstrating untrustworthiness), (10) (forging another's name to any document related to an insurance transaction), and (16) (committing any fraudulent act).

The ALJ noted that Hagaman and Hagaman Insurance's actions, as alleged in Count Five of the OTSC, were also a violation of N.J.S.A. 17:22A-40a(7), which states that an insurance producer commits a violation of the Producer Act for "[h]aving admitted or been found to have committed any insurance unfair trade practice or fraud." As the Department did not allege in the OTSC that the Respondents' actions were a violation of this provision or argue same in the Department's Motion for Summary Decision, I determine that this may have been an error and

the ALJ meant to find the Respondents' actions to be a violation of N.J.S.A. 17:22A-40a(2), which prohibits an insurance producer from "[v]iolating any insurance laws, or violating any regulation, subpoena or order of the commissioner or of another state's insurance regulator," as this provision was set forth in the OTSC and the Department's Motion for Summary Decision and is supported by the ALJ's factual findings. As such, I MODIFY the Initial Decision and FIND that the Hagaman and Hagaman Insurance's actions, as alleged in Count Five of the OTSC, are a violation of N.J.S.A. 17:22A-40a(2), rather than N.J.S.A. 17:22A-40a(7).

Additionally, I note that although the OTSC alleges that Hagaman and Hagaman Insurance's conduct, as alleged in Count Five, is a violation of N.J.S.A. 17:22A-40a(5) (intentionally misrepresenting the terms of an actual or proposed insurance contract, policy, or application for insurance), the Department did not argue same in its Motion for Summary Decision, and the ALJ made no finding or conclusion as to this provision. The actions of these Respondents, as alleged in Count Five, are similar to those alleged in Count Three, wherein the Department did not allege a violation of N.J.S.A. 17:22A-40a(5) in either the OTSC or its Motion for Summary Decision. As such, I make no finding or conclusion as to the applicability of this provision to Count Five.

Count Six

Count Six of the OTSC alleges that Respondents Hagaman and Hagaman Insurance mislead consumer PM to write a check for an annuity contract with American Equity, failed to remit the payments to American Equity, and misappropriated and converted the funds to the Respondents own use, in violation of N.J.S.A. 17:22A-40a(2), (4), (5), (8), and (16), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a) and (b), and N.J.A.C. 11:17C-2.2(a). I concur with the ALJ that the Department proved the allegations in Count Six of the OTSC, and I FIND that Hagaman's actions, as alleged in Count Six of the OTSC, violated N.J.S.A. 17:22A-40a(2)

(violating any insurance law or regulation), (5) (intentionally misrepresenting the terms of an actual or proposed insurance contract, policy, or application for insurance), (8) (demonstrating untrustworthiness), and (16) (committing any fraudulent act).

However, the ALJ made no determination as to whether the conduct as alleged by the Department in Count Six of the OTSC was a violation of N.J.S.A. 17:22A-40a(4), which prohibits the improper "withholding, misappropriating or converting any monies or properties received in the course of doing insurance business." The ALJ also made no determination as to whether the conduct was a violation of N.J.S.A. 17:22A-40a(8), which provides that an insurance producer violates the Producer Act by "[u]sing fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business in this State or elsewhere." The ALJ also made no determination as to whether the Respondents' conduct is a violation of N.J.A.C. 11:17A-4.10, which requires that "[a]n insurance producer acts in a fiduciary capacity in the conduct of his or her insurance business." Further, the ALJ made no determination as to whether Respondents' conduct is a violation of N.J.A.C. 11:17C-2.1(a), which provides that "[a]ll 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 N.J.A.C. 11:17C-2.1(b), which provides that "[a]ll premium funds shall be segregated and not in any manner commingled with any other funds of the insurance producer, except as may be permitted by this chapter." Lastly, the ALJ made no determination as to whether the Respondents' conduct is a violation of N.J.A.C. 11:17C-2.2(a), which provides that "[a]ll premium funds shall be remitted to the insurer or other insurance producer, as applicable, within five business days after receipt of the funds except as otherwise required. . . ."

Here, Respondents Hagaman and Hagaman Insurance, in October 2008, misappropriated $18,000 from consumer PM, who wished to invest this sum into an annuity with American Equity, by depositing PM's check made out to "American Investment Co." into Hagaman's Wachovia Bank account under the name "Robert W. Hagaman DBA American Investments." PSD at 7-8. Thereafter, between the dates of September 12, 2008 through October 24, 2008, Hagaman wrote nine checks to himself from the same Wachovia Bank account totaling $108,000. Id. at 9. As Respondents Hagaman and Hagaman Insurance improperly misappropriated and converted PM's funds, committed fraud, breached their fiduciary duty, converted PM's $18,000 premium for Hagaman's personal use, and failed to remit the funds to American Equity, I MODIFY the Initial Decision and FIND that Hagaman and Hagaman Insurance's actions, as alleged in Count Six of the OTSC, are also violations of N.J.S.A. 17:22A-40a(4) and (8), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a), and N.J.A.C. 11:17C-2.2(a). Further, as Respondents Hagaman and Hagaman Insurance deposited PM's premiums into an account that was commingled with funds that Hagaman used for his own personal use, I MODIFY the Initial Decision and FIND that Hagaman and Hagaman Insurance's actions, as alleged in Count Six, are also a violation of N.J.A.C. 11:17C-2.1(b).

Further, the ALJ included findings of violations for both Counts Six and Seven of the OTSC together, which included a finding of a violation of N.J.S.A. 17:22A-40a(10) (forging another's name to an application for insurance or to any document related to an insurance transaction). The Department did not allege a violation of this provision in Count Six of the OTSC or in its Motion for Summary Decision. Additionally, the factual findings do not support a conclusion that Hagaman or Hagaman Insurance forged another's name under Count Six of the OTSC. As such, I FIND no violation of N.J.S.A. 17:22A-40a(10) as to Count Six.

Count Seven

Count Seven of the OTSC alleges that Respondents Hagaman and Hagaman Insurance forged another's name to a document related to an insurance transaction, in violation of N.J.S.A. 17:22A-40a(2), (5), (8), (10), and (16). I concur with the ALJ that the Department proved the allegations in Count Seven of the OTSC, and I FIND that Hagaman and Hagaman Insurance's actions, as alleged in Count Seven of the OTSC, violated N.J.S.A. 17:22A-40a (2) (violating any insurance law or regulation), (5) (intentionally misrepresenting the terms of an actual or proposed insurance contract, policy, or application for insurance), (10) (forging another's name to an application for insurance or to any document related to an insurance transaction), and (16) (committing any fraudulent act).

However, the ALJ made no determination as to whether Hagaman and Hagaman Insurance's actions, as alleged in Count Seven, are a violation of N.J.S.A. 17:22A-40a(8), which prohibits an insurance producer from "[u]sing fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business in this State or elsewhere." Here, Hagaman and Hagaman Insurance provided a letter dated October 17, 2008, on American Investors letterhead, which advised PM that his $18,000 investment was earning 14.25 percent APR, provided him with a fictitious policy number and advised him to contact Hagaman if PM needed assistance with the company. PSD at 8. Further, the letter also provided PM with a Buyer's Guide to Indexed Annuities, an American Equity brochure, and an American Equity certificate. Ibid. American Equity has stated that the documents given to PM are fraudulent and the October 17, 2008 letter is a forgery. Ibid. In light of the forgoing, I MODIFY the Initial Decision and FIND that Hagaman and Hagaman Insurance's actions, as alleged in Count Seven of the OTSC, are also a violation of N.J.S.A. 17:22A-40a(8).

Count Eight

Count Eight of the OTSC alleges that Respondents Hagaman and Hagaman Insurance misled consumer MM to write two checks for an annuity policy, failed to timely remit the payments to an insurer, and misappropriated and converted the funds for Hagaman's personal use, in violation of N.J.S.A. 17:22A-40a(2), (4), (5), (8), and (16), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a) and (b), and N.J.A.C. 11:17C-2.2(a). I concur with the ALJ that the Department proved the allegations in Count Eight of the OTSC, and I FIND that Hagaman and Hagaman Insurance's actions, as alleged in Count Eight of the OTSC, violated N.J.S.A. 17:22A-40a(2) (violating any insurance law or regulation), (4) (prohibiting the improper withholding, misappropriating, or converting of any monies or properties received in the course of doing insurance business), (5) (intentionally misrepresenting the terms of an actual or proposed insurance contract, policy, or application for insurance), and (16) (committing any fraudulent act), N.J.A.C. 11:17A-4.10 (requires an insurance producer to act in a fiduciary capacity in the conduct of his or her insurance business), N.J.A.C. 11:17C-2.1(a) (prohibiting misappropriation and conversion of funds to insurance producer's own use) and (b) (prohibiting commingling of funds), and N.J.A.C. 11:17C-2.2(a) (premium funds shall be remitted to the insurer within five business days after receipt of the funds).

However, the ALJ made no determination as to whether the conduct, as alleged in Count Eight of the OTSC, is a violation of N.J.S.A. 17:22A-40a(8), which prohibits "[u]sing fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business in this State or elsewhere." Here, Hagaman and Hagaman Insurance deposited a $60,000 check dated September 9, 2008 and a $10,000 check dated October 2, 2008 from consumer MM into a Wachovia Bank account under the name "Robert W. Hagaman DBA American Investments." PSD at 9-10. Further, between the dates of

September 12, 2008 through October 24, 2008, Hagaman wrote checks to himself on the same bank account in the amount of $108,000. Id. at 10-11. Further, MM discovered during an April 27, 2009 telephone call with American Equity that the company received an application dated March 25, 2009 and a check dated April 3, 2009 in the amount of $70,000 on MM's behalf and therefore, did not have her funds prior to that date. Id. at 10. In light of the foregoing, I MODIFY and FIND that Hagaman and Hagaman Insurance's actions, as alleged in Count Eight of the OTSC, are also a violation of N.J.S.A. 17:22A-40a(8).

Further, I disagree with the ALJ's conclusion that Hagaman and Hagaman Insurance's actions, as alleged in Count Eight of the OTSC, are a violation of N.J.S.A. 17:22A-40a(10), which prohibits the forging of another's name to an application for insurance or to any document related to an insurance transaction. The Department did not allege a violation of this provision in either the OTSC or its Motion for Summary Decision. Additionally, the ALJ's factual findings do not support a conclusion that Hagaman or Hagaman Insurance forged another's name under Count Eight of the OTSC. As such, I FIND no violation of N.J.S.A. 17:22A-40a(10) as to Count Eight.

I also disagree with the ALJ's conclusion that Hagaman and Hagaman Insurance provided two false documents to consumer MM that indicated that actual enrollment had occurred. Id. at 17. The letter of Hagaman's employee, Idec, stated that Idec visited MM and provided her with "the policy" approximately a week after enrolling her into an American Equity annuity policy, in about September 2008 (Ritardi Cert., Ex. N). As no policy did in fact exist, this policy document was false. However, no other documents were found to have been provided to MM. As such, I MODIFY the Initial Decision to find that only one false document was provided to MM by Respondents.

Count Nine

Count Nine of the OTSC alleges that Respondents Hagaman and Hagaman Insurance mislead consumer RL into writing a check for an annuity contract, failed to timely remit the payments to an insurer, and misappropriated and converted the fund for Hagaman's personal use, in violation of N.J.S.A. 17:22A-40a(2), (4), (5), (8), and (16). I concur with the ALJ that the Department proved the allegations in Count Nine of the OTSC, and I FIND that Hagaman and Hagaman Insurance's actions, as alleged in Count Nine of the OTSC, violated N.J.S.A. 17:22A-40a (2) (violating any insurance law or regulation), (4) (prohibiting the improper withholding, misappropriating, or converting of any monies or properties received in the course of doing insurance business), (5) (intentionally misrepresenting the terms of an actual or proposed insurance contract, policy, or application for insurance), and (16) (committing any fraudulent act), N.J.A.C. 11:17A-4.10 (requires an insurance producer to act in a fiduciary capacity in the conduct of his or her insurance business), N.J.A.C. 11:17C-2.1(a) (prohibiting misappropriation and conversion of funds to insurance producer's own use) and (b) (prohibiting commingling of funds), and N.J.A.C. 11:17C-2.2(a) (premium funds shall be remitted to the insurer within five business days after receipt of the funds).

However, the ALJ made no determination as to whether the conduct, as alleged in Count Nine of the OTSC, is a violation of N.J.S.A. 17:22A-40a(8), which prohibits "[u]sing fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business in this State or elsewhere." Here, around September 23, 2008, Hagaman and Hagaman Insurance received a check from consumer RL in the amount of $26,000 for an annuity contract. PSD at 12. Thereafter, Hagaman deposited this check into the same Wachovia Bank account in which he deposited MM's premium funds in Count Eight. Ibid. Hagaman wrote personal checks out to himself on this bank account in funds

sufficient to absorb RL's funds. Ibid. RL discovered that American Equity did not receive an application or RL's premium funds until on or after April 1, 2009. Id. at 11. In light of the foregoing, I MODIFY and FIND that Hagaman and Hagaman Insurance's actions, as alleged in Count Nine of the OTSC, are also a violation of N.J.S.A. 17:22A-40a(8).

Further, I disagree with the ALJ's conclusion that Hagaman and Hagaman Insurance's actions, as alleged in Count Nine of the OTSC, are a violation of N.J.S.A. 17:22A-40a(10), which prohibits the forging of another's name to an application for insurance or to any document related to an insurance transaction. The Department did not allege a violation of this provision in either the OTSC or its Motion for Summary Decision. Additionally, the ALJ's factual findings do not support a conclusion that Hagaman or Hagaman Insurance forged another's name. As such, I FIND no violation of N.J.S.A. 17:22A-40a(10) as to Count Nine.

I also disagree that the ALJ's factual findings support a conclusion that Hagaman and Hagaman Insurance provided false documents to consumer RL that indicated that actual enrollments had occurred. The Department did not allege that Hagaman provided RL with false policy documents. Additionally, while Idec's letter stated that he sold an annuity to RL and realized a problem with RL's annuity shortly after visiting consumer MM (Ritardi Cert., Ex. N), there are no factual findings in the record to support a conclusion that any false documents relating to RL's annuity existed. While I agree with the ALJ that Hagaman held RL's funds for several months prior to sending the funds to American Equity, I cannot, based upon the record, find that Hagaman provided false documents to RL during the time he held RL's funds. As such, I MODIFY the Initial Decision to reflect same.

Count Ten

Count Ten of the OTSC alleges that Respondent Hagaman failed to utilize premium trust accounts for the deposit of insurance premiums and conducted insurance business under business

names not filed with or approved by the Commissioner, in violation of N.J.S.A. 17:22A-36, N.J.S.A. 17:22A-40a(2), (8), and (16), N.J.A.C. 11:17-2.7(a), and N.J.A.C. 11:17C-2.3(a) and (b). I concur with the ALJ that the Department proved the allegations in Count Ten of the OTSC, and I FIND that Hagaman's actions, as alleged in Count Ten of the OTSC, violated N.J.S.A. 17:22A-36 (requiring an insurance producer doing business under any name other than the producer's legal name to notify the Commissioner prior to using the assumed name), N.J.S.A. 17:22A-40a(2) (violating any insurance law or regulation), (8) (demonstrating untrustworthiness), and (16) (committing any fraudulent act), N.J.A.C. 11:17C-2.3(a) (requiring an insurance producer to establish and maintain a trust account into which cash, checks and other instruments payable to the insurance producer shall be deposited) and N.J.A.C. 11:17C-2.3(b) (requiring that the account be designated a "Trust Account" on the bank records and those words be displayed on the face of the checks on that account).

Further, the ALJ determined that Hagaman transaction of insurance business under business names not filed with or approved by the Commissioner violated N.J.A.C. 11:17-2.8, which requires insurance producers to conduct business only under names approve by the Commissioner. Count Ten of the OTSC alleges that by operating under names not approved by the Commissioner violates N.J.A.C. 11:17-2.7(a). N.J.A.C. 11:17-2.7 was recodified to N.J.A.C. 11:17-2.8, effective July 20, 2015. See 46 N.J.R. 1671(a), 47 N.J.R. 1872(a). In light of this, the OTSC in this matter should be conformed to reflect the correct regulatory citation. I agree with the ALJ's determination that Hagaman operating under names not approved by the Commissioner constitutes a violation of N.J.A.C. 11:17-2.8 and I AMEND the OTSC accordingly. In addition, I FIND that Hagaman operating under names not approved by the Commissioner violates N.J.A.C. 11:17-2.8.

Count Twelve

Count Twelve of the OTSC alleges that Respondent Hagaman as the DRLP and owner of Respondent the Medicare Store was responsible for and failed to supervise an employee, Morales, who was not a licensed agent for Geisinger, but who met with consumers and attempted to sell a Geisinger Medicare Advantage Plan to them and misrepresented the terms of the plan by stating that the consumers could use their original Medicare for any out-of-network doctor, when they could not, in violation of N.J.S.A. 17:22A-40a(2) and (8), N.J.A.C. 11:17-2.9(b)4, and N.J.A.C. 11:17A-1.6(c). I concur with the ALJ that the Department proved the allegations in Count Twelve of the OTSC, and I FIND that Hagaman and the Medicare Store's actions, as alleged in Count Twelve of the OTSC, violated N.J.S.A. 17:22A-40a(2) (violating any insurance law or regulation).

However, the ALJ made no determination as to whether the conduct, as alleged in Count Twelve of the OTSC, is a violation of N.J.S.A. 17:22A-40a(8), which prohibits "[u]sing fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business in this State or elsewhere." The ALJ also made no determination as to whether the conduct, as alleged in Count Twelve, is a violation of N.J.A.C. 11:17A-1.6(c), which requires that licensed partners, officers and directors be held responsible for all insurance related conduct of the organization employees. Additionally, the ALJ made no determination as to whether the conduct, as alleged in Count Twelve, is a violation of N.J.A.C. 11:17-2.9(b)4, which was recodified, effective July 15, 2015, to N.J.A.C. 11:17-2.10(b)4, which provides that "[a]n employer shall be responsible for the insurance-related conduct of an employee. In any disciplinary proceeding, the existence of the employment contract shall be prima facie evidence that the employer knew of the activities of the employee." See 46 N.J.R. 1671(a), 47 N.J.R. 1872(a).

Here, Hagaman sent an employee, Morales, to solicit an insurance product to consumers VT and AT, and during Morales's meeting with VT and AT, he misrepresented the Geisinger insurance product. PSD at 14. In light of the foregoing, I MODIFY and FIND that Hagaman and the Medicare Store's actions, as alleged in Count Twelve of the OTSC, are also a violation of N.J.S.A. 17:22A-40a(8), as Hagaman, as the DRLP for the Medicare Store demonstrated incompetence in the conduct of insurance business. Additionally, I MODIFY and FIND that Hagaman and the Medicare Store's actions, as alleged in Count Twelve of the OTSC are also violations of N.J.A.C. 11:17A-1.6(c), as Hagaman failed to supervise Morales's insurance-related conduct. Further, as the OTSC was issued prior to pursuant to N.J.A.C. 11:17-2.9(b)4 being recodified as N.J.A.C. 11:17-2.10(b)4, I AMEND the OTSC to correct the recodified reference of N.J.A.C. 11:17-2.10(b)4. I further FIND that Hagaman and the Medicare Store's failure to supervise Morales's insurance-related conduct, is a violation of N.J.A.C. 11:17-2.10(b)4.

Lastly, the ALJ found that Hagaman and the Medicare Store's conduct, as alleged in Count Twelve of the OTSC, is a violation of N.J.S.A. 17:22A-40(c), which states:

> The insurance producer license of a business entity may be suspended, revoked or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the commissioner nor corrective action taken.

While the OTSC does not allege that Hagaman and the Medicare Store's conduct is a violation of this statutory reference, the Department does argue this in its Motion for Summary Decision. As such the Respondents were on notice of the statutory reference and the factual basis for this allegation.

N.J.A.C. 1:1-6.2(a) provides that "[u]nless 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." Prior Commissioners have permitted such amendments. See Commissioner v. Furman, OAL Dkt No. BKI 3891-06, Initial Decision (06/21/07), Final Decision and Order (09/17/07) (wherein, the respondent's supplying of false information to an insurer was not alleged in the Order to Show Cause; however, the respondent admitted to supplying said false information during cross examination, and the Commissioner cited to N.J.A.C. 1:1-6.2 and concluded that "the pleadings in this case should be modified to conform with the evidence on the record. . . .")

Therefore, pursuant to N.J.A.C. 1:1-6.2, and for the reasons set forth by the ALJ in the Initial Decision, I AMEND the OTSC and FIND that Hagaman and the Medicare Store's conduct, as alleged in Count Twelve of the OTSC, is also a violation of N.J.S.A. 17:22A-40c.

Count Fourteen

Count Fourteen of the OTSC alleges that Respondent Hagaman failed to respond to a Department request for appearance, in violation of N.J.S.A. 17:22A-40a(2) and N.J.A.C. 11:17A-4.8. I concur with the ALJ that the Department proved the allegations in Count Fourteen of the OTSC, and I FIND that Hagaman's actions, as alleged in Count Fourteen of the OTSC, violated N.J.S.A. 17:22A-40a(2) (violating any insurance law or regulation) and N.J.A.C. 11:17A-4.8 ("an insurance producer shall reply, in writing, to any inquiry of the Department relative to the business of insurance within the time requested in said inquiry, or no later than 15 calendar days from the date the inquiry was made or mailed. . . .").

Penalty against Respondents Hagaman, Hagaman Insurance, and the Medicare Store

Revocation of Respondents' Producer Licenses

With respect to the appropriate action to take against Respondents Hagaman, Hagaman Insurance, and the Medicare Store's insurance producer licenses, I find that the record is more than sufficient to support license revocation and, in fact, compels the revocation of the Respondents' licenses. As such, I concur with the ALJ's recommendation that these Respondents' licenses be revoked.

A licensee's honesty, trustworthiness, and integrity are of paramount concern, since an insurance producer acts as a fiduciary to both the consumers and insurers they represent. The nature and duty of an insurance producer "calls for precision, accuracy and forthrightness." Fortunato v. Thomas, 95 N.J.A.R. (INS) 73 (1993). Additionally, a licensed producer is better placed than a member of the public to defraud an insurer. Strawbridge v. New York Life Ins. Co., 504 F.Supp. 824 (1980). As such, 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.

As the public, in general, is adversely affected in a significant way by insurance fraud, New Jersey views insurance fraud as a serious problem to be confronted aggressively and it has a particularly strong public policy against the proliferation of insurance fraud. Palisades Safety and Insurance Association v. Bastien, supra. In decisions by prior Commissioners in similar cases, revocation has consistently been imposed upon licensees who have personally engaged in fraudulent acts, as both insureds and insurers must place their trust in the information insurance producers convey to them. See Commissioner v. Hohn, OAL Dkt. No. BKI 12444-11, Initial Decision (11/01/12), Final Decision and Order (03/18/13). Moreover, the Commissioner has consistently held that misconduct involving "misappropriation of premium monies, bad faith and

dishonestly compels license revocation." Commissioner v. Strandskov, OAL Dkt. No. BKI 03451-07, Initial Decision (09/25/08), Final Decision and Order (02/04/09).

Our strong policy is to instill public confidence in both insurance professionals and the industry as a whole. In re Parkwood Co., 98 N.J. Super. 263 (App. Div. 1963). Courts have long 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. See Sheeran v. Nationwide Mutual Insurance Company, 80 N.J. 548, 559 (1979). As evidenced by prior decisions, only the existence of extraordinary mitigating factors can form a basis for withholding the sanction of license revocation in cases involving direct personal conduct on the part of a licensee that constitutes fraud. See Goncalves, supra, Commissioner v. Nicolo, OAL Dkt. No. BKI 10722-04, Initial Decision, (05/31/06), Final Decision and Order (10/12/06), and Commissioner v. Thomas Dobrek and Mr. Lucky Bail Bonds, Inc., OAL Dkt. No. BKI 00361-05, Initial Decision (12/26/06), Final Decision and Order (03/26/07). The typical mitigating factors of restitution, inexperience, lack of prior negative history, motivations and pressures of the misconduct, and the possibility of reform cannot form a basis to support a sanction other than revocation in cases involving the misappropriation of client funds. Commissioner v. Ladas, OAL Dkt. BKI 0947-02, Initial Decision (02/05/04), Final Decision and Order (06/22/04).

I agree with the ALJ's findings that Respondents' actions were egregious and demand the revocation of the Respondents' producer licenses. As the aforementioned decisions show, revocation is appropriate in almost all cases wherein a licensed insurance producer has engaged in fraud, misappropriation of premium monies, bad faith, and dishonesty. Here, Hagaman, over the course of several years, misappropriated at least $170,200 of insurance funds that were entrusted to him by at least four senior citizens. In fact, Hagaman perpetrated a scheme to defraud elderly consumers by opening bank accounts that were owned and operated by Hagaman

and which had names that were similar to those of reputable insurers. Additionally, Hagaman forged insurance documents, forged letters on American Investors letterhead, which promised consumers substantial returns, and misrepresented the terms of insurance products.

While the Respondents argued that suspension is appropriate in this matter as a regulatory scheme should include some incentives for producers who voluntarily remedy losses to victims, the typical mitigating factor of restitution cannot form a basis to support a sanction other than revocation in cases involving the misappropriation of client funds. See Commissioner v. Ladas, supra. I agree with the ALJ that the Respondents' actions compel revocation of their insurance producer licenses, rather than suspension.

Accordingly, based upon my review of the record and the Initial Decision, I am compelled to agree with the ALJ's determination that the revocation of the Hagaman's producer license is necessary and appropriate. Further, As Hagaman used his business entities, Hagaman Insurance and the Medicare Store, to perpetuate his fraudulent schemes and as Hagaman was the owner and sole DRLP of each entity, I also agree with the ALJ's recommendation that revocation of the insurance producer licenses of Hagaman Insurance and the Medicare Store is necessary and appropriate. I make no determination as to the revocation of Hagaman Financial Group's producer's license as the OTSC does not allege any violations against Hagaman Financial Group; however, I further discuss the impact of Hagaman's license revocation upon Hagaman Financial Group and any other of Hagaman's businesses holding a license as an insurance producer below.

Monetary Penalty Against Respondents

As discussed by the ALJ, under Kimmelman, supra, certain factors are to be examined when assessing administrative monetary penalties such as those that may be imposed pursuant to N.J.S.A. 17:22A-45 upon insurance producers (up to $5,000 for the first violation and up to

$10,000 for any subsequent violations). No one Kimmelman factor is dispositive for or against fines and penalties. See Kimmelman, supra, 108 N.J. at 139 ("[t]he weight to be given to each of these factors by a trial court in determining . . . the amount of any penalty, will depend on the facts of each case").

I agree with the ALJ's findings regarding the Kimmelman factors, with the following clarifications discussed as follows. The first Kimmelman factor addresses the good faith or bad faith of the violator. I agree with the ALJ that Respondents' conduct demonstrates bad faith and weighs in favor of a significant monetary penalty.

As to the second Kimmelman factor, I agree with the ALJ that no proofs have been provided regarding the Respondents' ability to pay the fines imposed. Respondents who claim an inability to pay civil penalties bear the burden of proving their incapacity. Goldman v. Shah, OAL Dkt. No. BKI 11903-05, Initial Decision (04/15/08), Final Decision and Order (09/02/08). Regardless, an insurance producer's ability to pay is only a single factor to be considered in determining an appropriate fine and does not obviate the need for the imposition of an otherwise appropriate monetary penalty Commissioner v. Malek, OAL Dkt. No.: BKI 4520-05, Initial Decision (12/6/05), Final Decision and Order No. E06-12 at 6-7 (1/18/06) (increasing fine recommended by ALJ from $2,500 to $20,000 even though producer argued an inability to pay fines in addition to restitution); Commissioner v. Erwin, OAL Dkt. No.: BKI 4573-06, Initial Decision (7/9/07), Final Decision and Order No. E07-78 (9/17/07) .

The third Kimmelman factor addresses the amount of profits obtained or likely to be be obtained from the illegal activity. The greater the profits an individual is likely to obtain from illegal conduct, the greater the penalty must be if penalties are to be an effective deterrent. Kimmelman, supra, 108 N.J. at 138. In light of Respondents' assertions regarding the payment of restitution months after misappropriate of the consumers' investment funds, the ALJ

incorrectly found that the amount of the profits the Respondents obtained from their unlawful behavior is not in the record. First, it must be noted that the Respondents profited through the misappropriation of the consumers' funds for months at a time - months during which those consumers were deprived of making any investment profits on their funds. Additionally, Kimmelman does not limit consideration of this factor to actual profits. Thus, the Respondents' reliance on the fact that restitution was eventually made is of no import. Kimmelman requires me to consider not only actual profits, but the profits that the Respondents would have likely made if their acts in violation of the insurance laws of this State were successful. The ALJ notes that approximately $161,200 was misappropriated from elderly consumers; however, the record shows that the Respondents misappropriated approximately $170,200. As such, I MODIFY the Initial Decision to correct the total amount of the Respondents' misappropriation and the Respondents' illegal profits. I also note that this factor weighs in favor of a significant monetary penalty.

The fourth Kimmelman factor addresses the injury to the public. Licensed producers act in a fiduciary capacity. In re Parkwood Co., supra, 98 N.J. Super. at 268. Moreover, the Commissioner is charged with the duty to protect the public welfare and to instill public confidence in both insurance producers and the insurance industry. "When insurance producers breach their fiduciary duties and engage in fraudulent practices and unfair trade practices, the affected insurance consumers are financially harmed and the public's confidence in the insurance industry as a whole is eroded." Fonseca, supra. The ALJ noted that this factor is disputed as the Respondents argue that they made voluntary restitution to their victims before litigation began, and harsh penalties should be reserved to those who are forced to make restitution. I disagree with the Respondents' argument. Here, the Respondents actions are egregious. The Respondents solicited elderly consumers who wished to invest in annuities. The Respondents

then deposited the premium funds from these consumers and forged policy documents and letters from reputable insurers wherein they promised substantial rates of returns, all while using the funds for their own personal benefit. Additionally, the record shows that the Respondents returned the stolen funds only after they became aware that their victims discovered that their policies were fictitious by contacting the alleged insurer, which had no record of their policies or policy numbers. Further, not only did the Respondents' actions harm each one of their elderly victims, there is a potential of harm to the public's image of insurance producers when licensed producers, such as the Respondents, commit acts of dishonesty, bad faith, theft, or fraud. As such, I MODIFY the Initial Decision and FIND that this factor weighs in favor of a significant monetary penalty.

The fifth Kimmelman factor to be examined is the duration of the illegal activity. I agree with the ALJ that the Respondents' fraudulent actions continued for a period of over five years from September 2008, when consumer JN directed funds be wired to Hagaman's Wachovia bank account, through December 31, 2010, when the Geisinger application for AT and VT were received. Thus, I find that between 2008 through 2010, the Respondents conducted a scheme to defraud elderly consumers and misappropriate annuity premiums. The Respondent's actions were not isolated to a single incident but were a series of fraudulent activities. Such a long period of time shows a pattern of behavior and accordingly, weighs heavily in favor of a substantial monetary penalty.

The existence of criminal actions and whether a civil penalty may be unduly punitive if other sanctions have been imposed is the sixth factor. The Supreme Court held in Kimmelman that a lack of criminal punishment weighs in favor of a more significant civil penalty because the defendant cannot argue that he or she has already paid a price for his or her unlawful conduct. Kimmelmen, supra, 108 N.J. at 139. This factor weighs in favor of a substantial monetary

penalty because the Respondents have not been subjected to criminal punishment or other sanctions previously imposed for their actions as alleged in the OTSC.

The last Kimmelman factor addresses whether the producer had previously violated the Producer Act and if past penalties have been insufficient to deter future violations. Here, as the ALJ noted, Hagaman signed Consent Order No. E11-34 on May 13, 2011 for violating the Producer Act by conducting insurance business under any name other than the producer's legal name without prior approval of the Commissioner. Hagaman was assessed a fine of $1,000, which did not deter future misconduct because he continued to operate multiple bank accounts under names that were not approved by the Commissioner. As such, this factor also militates for imposition of substantial penalties.

In light of the above Kimmelman analysis and based on the violations I have concluded that Respondents committed, I ADOPT the recommendations of the ALJ that Respondent Hagaman shall individually pay civil monetary penalties for Count Two in the amount of $10,000, Count Four in the amount of $10,000, Count Ten in the amount of $40,000, and Count Fourteen in the amount of $2,500 for a total monetary penalty of $62,500; and Respondents Hagaman and Hagaman Insurance shall jointly and severally pay civil monetary penalties for Count Three in the amount of $10,000, Count Five in the amount of $10,000, Count Six in the amount of $20,000, Count Seven in the amount of $10,000, Count Eight in the amount of $20,000, and Count Nine in the amount of $10,000 for a total monetary penalty of $80,000.

As I concluded above that the factual findings do not support a conclusion that Hagaman and Hagaman Insurance provided two false policy documents to MM in Count Eight of the OTSC, I MODIFY the Initial Decision to provide that the monetary penalty imposed of $20,000 is based upon a finding that Hagaman and Hagaman Insurance solicited consumer MM on two separate occasions, misappropriated the funds on two separate occasions, held the funds, on two

separate occasions, for longer than five days before remitting them to American Equity, and provided one false document to MM.

Additionally, as I concluded above that the factual findings to do not support a conclusion that Hagaman and Hagaman Insurance provided false policy documents to RL in Count Nine of the OTSC, I MODIFY the Initial Decision to provide that the monetary penalty imposed of $10,000 is based upon a finding that Hagaman and Hagaman Insurance solicited funds from RL, misappropriated the funds, and held the funds for longer than five days before remitting them to American Equity.

As Count Twelve alleged violations against Respondents Hagaman and the Medicare Store, and not Respondent Hagaman Insurance, I MODIFY the Initial Decision regarding the parties responsible for the penalty in Count Twelve and ORDER that Respondents Hagaman and the Medicare Store shall jointly and severally pay a civil monetary penalty for Count Twelve in the amount of $10,000.

The fines are fully warranted, not excessive or unduly punitive, and are necessary to demonstrate the appropriate level of opprobrium for the Respondents' fraudulent conduct.

Pursuant to N.J.S.A. 17:22A-45c, it is appropriate to impose reimbursement of the costs of investigation. As Respondents Hagaman, Hagaman Insurance, and the Medicare Store were involved in the Department's Investigation, I MODIFY the recommendations of the ALJ to reflect that Respondents Hagaman, Hagaman Insurance, and the Medicare Store shall pay costs of investigation in the amount of $1,400, jointly and severally.

CONCLUSION

Having carefully reviewed the Initial Decision and the entire record herein, I hereby ADOPT the Findings and Conclusions as set forth in the Initial Decision. Specifically, I ADOPT

the ALJ's conclusions, except as modified herein, and hold that the Respondent violated the Producer Act as charged in the OTSC, and have failed to present any legally or factually viable defenses to the violations of the Producer Act. Further, I ADOPT the conclusion that the Department's Motion for Summary Decision should be granted on Counts Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Twelve, and Fourteen as charged in the OTSC. As the Department withdrew Counts One, Eleven, and Thirteen of the OTSC, I make no factual findings, determinations, or conclusions of law as to Counts One and Thirteen of the OTSC. I ADOPT only limited factual findings related to Count Eleven which provide the factual basis for findings related to Hagaman and the Medicare Store's failure to supervise as alleged in Count Twelve.

I also ADOPT the ALJ's recommendation and hereby ORDER the revocation of Respondents Hagaman, Hagaman Insurance, and the Medicare Store's insurance producer licenses. I further ADOPT the ALJ's recommendations as to the fines for Counts Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Twelve, and Fourteen of the OTSC, and I MODIFY the Initial Decision to reflect that Respondents Hagaman and the Medicare Store, and not Hagaman Insurance, are responsible for the penalty accessed for Count Twelve of the OTSC. Therefore, I impose the following fines: Count Two: $10,000 against Respondent Hagaman, individually, Count Three: $10,000 against Respondents Hagaman and Hagaman Insurance, jointly and severally, Count Four: $10,000 against Respondent Hagaman, individually, Count Five: $10,000 against Respondents Hagaman and Hagaman Insurance, jointly and severally, Count Six: $20,000 against Respondents Hagaman and Hagaman Insurance, jointly and severally, Count Seven: $10,000 against Respondents Hagaman and Hagaman Insurance, jointly and severally, Count Eight: $20,000 against Respondents Hagaman and Hagaman Insurance, jointly and severally, Count Nine: $10,000 against Respondents Hagaman and Hagaman Insurance, jointly

and severally, Count Ten: $40,000 against Respondent Hagaman, individually, Count Twelve: $10,000 against Respondents Hagaman and the Medicare Store, jointly and severally, and Count Fourteen: $2,500 against Respondent Hagaman, individually, for a total civil monetary penalty against Respondent Hagaman, individually, of $62,500, Respondents Hagaman and Hagaman Insurance, jointly and severally, of $80,000, and Respondents Hagaman and the Medicare Store, jointly and severally, of $10,000. I further MODIFY the ALJ's recommendation and ORDER that Respondents Hagaman, Hagaman Insurance, and the Medicare Store pay costs of investigation in the amount of $1,400, jointly and severally.

Further, although the OTSC was issued to Hagaman Financial Group, in addition to the other Respondents, the OTSC contains no allegations relating to Hagaman Financial Group. It should be noted that N.J.A.C. 11:17D-2.5 discusses the effect of a suspension or revocation of a producer's license. Specifically, N.J.A.C. 11:17D-2.5(e) provides that "[n]o person whose license has been suspended or revoked may be a partner, officer, director or owner of a licensed business entity, or otherwise be employed in any capacity by an insurance producer." As such, while this Final Decision and Order does not address any violations that may have occurred under Hagaman Financial Group's operations, Hagaman, as the DRLP of Hagaman Financial Group, must divest himself from all aspects of Hagaman Financial Group's operations and is not permitted to be employed by said entity in any capacity. This is true for any other licensed business entity producers in which Hagaman is so associated. Therefore, I ORDER that Hagaman comply with the provisions as set forth in N.J.A.C. 11:17D-2.5(e). Moreover, pursuant to N.J.A.C. 11:17D-2.5(c), I note that "[n]o other licensed individual or organization shall advertise, display or conduct any insurance business using the legal or business name of any person whose license has been revoked." Thus, it should also be mentioned that no other

licensed individual or organization may "advertise, display, or conduct any insurance business" under Hagaman's legal or business name(s).

It is so ORDERED on this 17th day of March, 2016

Richard J. Badolato
Acting Commissioner

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