

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

\_\_\_\_\_  
Proceedings by the Commissioner of Banking )  
and Insurance, State of New Jersey, to fine, )  
suspend, and/or revoke the insurance producer )  
license of Magdalena Guzman, Reference No. )  
1300136 )  
\_\_\_\_\_ )

**FINAL ORDER**

TO: Magdalena Guzman  
423 New Brunswick Avenue  
Perth Amboy, NJ 08861

Magdalena Guzman  
4640 Deleon Street, Apt. H147  
Fort Myers, FL 33907

This matter, having been opened by the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon issuance of Order to Show Cause E18-07 (the “OTSC”) alleging that Magdalena Guzman (“Guzman”), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Guzman was licensed as a resident insurance producer pursuant to N.J.S.A. 17:22A-32 until her license expired on July 31, 2015; and

WHEREAS, Guzman is subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48 (“Producer Act”), the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 to 11:17D-2.8, the New Jersey

Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -30 ("Fraud Act") and the regulations promulgated thereunder, N.J.A.C. 11:16-1.1 to -7.10; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40d, the Commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by the Producer Act and Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes against any person who is under investigation for or charged with a violation of the Producer Act or Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes even if the person's license or registration has been surrendered or has lapsed by operation of law; and

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

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(5), an insurance producer shall not intentionally misrepresent the terms of an actual or proposed insurance contract, policy or application for insurance; and

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

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(10), an insurance producer shall not forge another's name to an application for insurance or to any document related to an insurance transaction; and

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

WHEREAS, pursuant to N.J.A.C. 11:17A-4.8, an insurance producer shall reply, in writing, to any inquiry of the New Jersey Department of Banking and Insurance (“Department”) relative to the business of insurance within the time requested in said inquiry, or no later than 15 calendar days from the date the inquiry was made or mailed in cases where no response time is given; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a, the Commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producers license, and may levy a civil penalty for violations of the Producer Act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45c, any person violating the Producer Act is subject to a penalty not exceeding \$5,000.00 for the first offense, and not exceeding \$10,000.00 for each subsequent offense; moreover, the Commissioner may order restitution of moneys owed any person and reimbursement of costs of the investigation and prosecution; and

WHEREAS, pursuant to N.J.S.A. 17:33A-4a(4)(b), a person who prepares or makes any written or oral statement, intended to be presented to any insurance company or producer for the purpose of obtaining an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to an insurance application or contract, violates the Fraud Act; and

WHEREAS, pursuant to N.J.S.A. 17:33A-5a and 5c and N.J.A.C. 11:16-7.9(a) and 7.9(c), violations of the Fraud Act subject the violator to a civil and administrative penalty of not more than \$5,000.00 for the first violation, \$10,000.00 for the second violation and \$15,000.00 for each subsequent violation; moreover, the Commissioner may issue a final order assessing restitution and costs of prosecution, including attorneys’ fees; and

WHEREAS, pursuant to N.J.S.A. 17:33A-5.1, any person who is found in any legal proceeding to have committed insurance fraud shall be subject to a surcharge in the amount of \$1,000.00; and

WHEREAS, on February 7, 2018, the Commissioner issued the OTSC, alleging that Guzman violated various New Jersey insurance laws by as set forth in the following:

**COUNT 1**

IT APPEARING, that at all relevant times, Guzman was a producer and associate for the American Family Life Assurance Company of Columbus (“Aflac”); and

IT FURTHER APPEARING, that in August 2013, Guzman met with R.T., the office manager of an automobile body shop business located in Passaic, New Jersey (the “Auto Body Shop”) to review the Auto Body Shop’s insurance coverages; and

IT FURTHER APPEARING, that R.T. advised Guzman that the Auto Body Shop was not interested in purchasing any insurance products; and

IT FURTHER APPEARING, that R.T. did not provide Guzman with any information about employees or sign any documents; and

IT FURTHER APPEARING, that on or about August 9, 2013, Guzman submitted to Aflac, on behalf of the Auto Body Shop, an Aflac Payroll Account Acknowledgment form with the forged signature of R.T., which form authorizes Aflac to offer insurance to the employer’s officers and employees and obligates the employer to deduct premiums for the Aflac insurance from the wages of the persons electing to purchase Aflac coverage and to remit those premiums to Aflac; and

IT FURTHER APPEARING, that on or about September 27, 2013, Guzman submitted to Aflac two policy applications for accident and dental insurance for a fictitious Auto Body Shop employee identified on the application as Mikael Santos and forged Mikael Santos’s signature on the applications; and

IT FURTHER APPEARING, that on or about September

27, 2013, Guzman submitted to Aflac two policy applications for accident and hospital insurance for a fictitious Auto Body Shop employee identified on the application as Javier Golpa and forged Javier Golpa's signature on the applications; and

IT FURTHER APPEARING, that on or about September 27, 2013, Guzman submitted to Aflac three policy applications for accident, hospital and dental insurance for a fictitious Auto Body Shop employee identified on the application as Juan Bautista and forged Juan Bautista's signature on the applications; and

IT FURTHER APPEARING, that Guzman submitted to Aflac one false Payroll Account Acknowledgement Application form and seven false policy applications for insurance for three fictitious Auto Body Shop employees and forged their signatures in violation of N.J.S.A. 17:22A-40a(2), (5), (8), (10) and (16); and

### **COUNT 2**

IT FURTHER APPEARING, that Guzman prepared and presented to Aflac, for the purpose of obtaining insurance policies, one false Payroll Account Acknowledgement form and seven false policy applications for insurance from the Auto Body Shop knowing that the statements contained false and misleading information concerning material facts to the insurance applications or contracts in violation of N.J.S.A. 17:33A-4a(4)(b); and

### **COUNT 3**

IT FURTHER APPEARING, that on or about December 18, 2013, Guzman submitted to Aflac a Payroll Account Acknowledgment Application form on behalf of a hair salon business allegedly known as "Beauty on You" with an address of "336 Sherman Street, Suite C, Passaic, New Jersey 07055" and forged the signature of Paola Blanco who was represented as the authorized employer signature for Beauty on You; and

IT FURTHER APPEARING, that there was no hair salon business known as Beauty on You located at 336 Sherman Street, Suite C, Passaic, New Jersey 07055 and the name Paola Blanco could not be verified as being associated with any business known as Beauty on You; and

IT FURTHER APPEARING, that between December 20, 2013 and January 7, 2014, Guzman submitted to Aflac three policy

applications for accident, hospital and dental insurance for a fictitious Beauty on You employee identified on the application as Julia Maria and forged Julia Maria's signature on the applications; and

IT FURTHER APPEARING, that between December 20, 2013 and January 7, 2014, Guzman submitted to Aflac two policy applications for accident and dental insurance for a fictitious Beauty on You employee identified on the application as Judith Gonzalez and forged Judith Gonzalez's signature on the applications; and

IT FURTHER APPEARING, that between December 20, 2013 and January 7, 2014, Guzman submitted to Aflac three policy applications for accident, hospital and cancer insurance for a fictitious Beauty on You employee identified on the application as Yvette Rodriguez and forged Yvette Rodriguez's signature on the applications; and

IT FURTHER APPEARING, that on or about December 20, 2013, Guzman submitted to Aflac two policy applications for hospital and cancer insurance for a fictitious Beauty on You employee identified on the application as Menlay Ochoa King and forged Menlay Ochoa King's signature on the applications; and

IT FURTHER APPEARING, that between December 20, 2013 and January 7, 2014, Guzman submitted to Aflac two policy applications for accident and hospital insurance for a fictitious Beauty on You employee identified on the application as Sandra Ortiz and forged Sandra Ortiz's signature on the applications; and

IT FURTHER APPEARING, that between December 20, 2013 and January 7, 2014, Guzman submitted to Aflac three policy applications for accident, hospital and dental insurance for a fictitious Beauty on You employee identified on the application as Vicky Diaz and forged Vicky Diaz's signature on the applications; and

IT FURTHER APPEARING, that between December 20, 2013 and January 7, 2014, Guzman submitted to Aflac two policy applications for accident and hospital insurance for a fictitious Beauty on You employee identified on the application as Yesenia Rodriguez and forged Yesenia Rodriguez's signature on the applications; and

IT FURTHER APPEARING, that between December 2013 and January 2014, Aflac paid Guzman commissions in the amount of \$1,162.62 for the policies issued to the fictitious Beauty on You employees; and

IT FURTHER APPEARING, that Aflac that could not verify that the policy holders existed; and

IT FURTHER APPEARING, that Guzman submitted to Aflac one false Payroll Account Acknowledgement Application form and seventeen false policy applications for insurance for fictitious Beauty on You employees under seven false employee names and forged the signatures in violation of N.J.S.A. 17:22A-40a(2), (5), (8), (10) and (16) ; and

#### COUNT 4

IT FURTHER APPEARING, that a Guzman prepared and presented to Aflac, for the purpose of obtaining insurance policies, one false Payroll Account Acknowledgement form and seventeen false policy applications for insurance for the fictitious Beauty on You employees as described in Count 3, knowing that the statements contained false and misleading information concerning material facts to the insurance applications or contracts in violation of N.J.S.A. 17:33A-4a(4)(b); and

#### COUNT 5

IT FURTHER APPEARING, that the Guzman failed to provide a written response with supporting documentation relative to the Auto Body Shop's insurance applications submitted to Aflac in response to Department letters dated November 5, 2014, November 24, 2014 and December 9, 2014 and to Subpoena 15-01 issued by the Department on February 4, 2015, in violation of N.J.S.A. 17:22A-40a(2) and N.J.A.C. 11:17A-4.8; and

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

IT FURTHER APPEARING that as set forth in the Certification of Nicholas Kant, under cover letter dated February 9, 2018 the OTSC was sent by certified and regular mail to the last

certified and regular mail to the last known business address of Guzman at 423 New Brunswick Avenue, Perth Amboy, NJ 08861; and .

IT FURTHER APPEARING that as set forth in the Certification of Nicholas Kant, attached hereto as Exhibit A, under cover letter dated April 4, 2018 the OTSC was sent by certified and regular mail to the last known residential address of Guzman at 4640 Deleon Street, Apt. H147, Fort Myers, FL 33907; and

IT FURTHER APPEARING that mailing of the OTSC by regular and certified mail to the business and residential addresses of Guzman, according to files maintained by the Department, constitutes lawful service, pursuant to N.J.A.C. 11:17D-2.1(a)3;

NOW, THEREFORE, IT IS on this *3<sup>rd</sup>* day of *January*, 2019:

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

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

IT IS FURTHER ORDERED, that Guzman shall be responsible for the payment of \$16,000.00 in civil penalties for violations of the Producer Act, Fraud Act, and other insurance laws cited above as follows:

Guzman shall be responsible for the payment of civil penalties to the Division of Insurance Enforcement totaling \$7,500.00 for the Producer Act violations as described in Counts 1 and 3 of the Order to Show Cause; and

Guzman shall be responsible for the payment of civil penalties to the Division of



Insurance Enforcement totaling \$1,000.00 for the Producer Act violation as described in Count 5 of the Order to Show Cause; and

Guzman shall be responsible for the payment of civil penalties to the Bureau of Fraud Deterrence totaling \$7,500.00 for the Fraud Act violations as described in Counts 2 and 4 of the Order to Show Cause; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45c and N.J.S.A. 17:33A-5c, Guzman shall pay restitution directly to Aflac in the amount of \$1,162.62 for the violations of the Producer Act and Fraud Act described in Counts 3 and 4 of the Order to Show Cause, with proof of payment to be sent to the Department; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45c and N.J.A.C. 11:1-32.4(b)20, Guzman shall reimburse the Department of Banking and Insurance, Division of Insurance Enforcement, for the costs associated with the investigation and prosecution of this matter, as evidenced by the Certification of Costs by Investigator Gaston Celi, totaling \$550.00. The Commissioner has reviewed the investigative costs application and finds the amount of time to be reasonable; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:33A-5c, Guzman shall reimburse the Department of Banking and Insurance, Bureau of Fraud Deterrence, for the attorneys' fees associated with the investigation and prosecution of this matter, as evidenced by the Certification of Nicholas Kant, totaling \$3,000.00. The Commissioner has reviewed the attorneys' fees application and finds the amount of time to be reasonable; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:33A-5.1, Guzman shall pay the Department of Banking and Insurance, Bureau of Fraud Deterrence, a statutory fraud

surcharge in the amount of \$1,000.00; and

IT IS FURTHER ORDERED, that Guzman shall pay the above fines and costs totaling \$20,550.00 by remitting full payment to the Commissioner of Banking and Insurance, State of New Jersey, 20 West State Street, P.O. Box 329, Trenton, New Jersey 08625, Attention: Virgil Downtin, Chief of Investigations by certified check, cashier's check or money order made payable to the "State of New Jersey, General Treasury," along with proof of payment of restitution directly to Aflac in the amount of \$1,162.62, within ten (10) days from the date of service of this Order; and

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

IT IS FURTHER ORDERED, that the fines in this Final Order are imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of the public health, safety and welfare, and are not intended to constitute debts which may be limited or discharged in a bankruptcy proceeding; and

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

  
\_\_\_\_\_  
Marlene Caride  
Commissioner