

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 license of Kirti Shah, Reference No. 9023393.	) ORDER DENYING MOTION TO VACATE ) ORDER NO. E19-31 SUSPENDING KIRTI ) SHAH'S INSURANCE PRODUCER ) LICENSE PENDING COMPLETION OF ) ADMINISTRATIVE PROCEEDINGS
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This matter comes before the Commissioner of the Department of Banking and Insurance ("Commissioner") pursuant to a motion by Respondent Kirti Shah ("Shah" or "Respondent"), seeking to vacate Order No. E19-31 ("Order"), which suspended Shah's insurance producer license pending the completion of administrative proceedings pursuant to N.J.S.A. 17:22A-45(d). Shah's motion requested that the suspension of his producer license be lifted. For the reasons set forth below, the Respondent's motion is DENIED.

PROCEDURAL HISTORY

On January 24, 2019, the Department of Banking and Insurance ("Department") issued Order to Show Cause No. E19-12 ("OTSC E19-12") which sought immediate suspension of Respondent's license pending the completion of administrative proceedings. Shah had seven days to respond to OTSC E19-12. On the same day, the Department also issued Order to Show Cause No. E19-13 ("OTSC E19-13"), which alleged that Shah violated the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48 ("Producer Act"), and sought license revocation, monetary penalties, and costs. The violations alleged in OTSC E19-13 stem from a November 3, 2017, Judgment of Conviction that was entered by the Superior Court of Morris County convicting Shah of one count of forgery in the fourth degree under N.J.S.A. 2C:21-1(a)(1) based on Shah altering or changing a writing of another without authorization.

On January 31, 2019, the Respondent, via e-mail, requested an extension of 30 days to respond to both Orders to Show Cause. On February 6, 2019 the Department's counsel, Nicholas Kant, Deputy Attorney General, ("DAG Kant") consented to an extension to March 15, 2019 for Shah to file a response to OTSC E19-13, which sought license revocation, monetary penalties, and costs. DAG Kant did not consent to an extension related to OTSC E19-12, which sought the immediate suspension of Shah's license pending the completion of administrative proceedings. On February 6, 2019, Shah, via e-mail, indicated that he had "suspended to write any form of insurance business under [his] NJ Resident Producer License, nor any form of business under any other Non-Resident broker license" effective January 31, 2019.

By letter dated March 8, 2019 to the Department, Shah stated that his request for an extension to respond to OTSC E19-12 was denied and that he had "no choice but to provide [his] reasons as to why [his] State of New Jersey Resident License should NOT be suspended." The Department's counsel, Brian R. Fitzgerald, Deputy Attorney General ("DAG Fitzgerald") responded by letter dated March 11, 2019 that Shah's letter was sent after the time to respond had expired and that the Respondent had not given reasons why his license should not be suspended. On March 25, 2019, the Department issued Order E19-31, suspending Shah's license until the completion of administrative proceedings pursuant to N.J.S.A. 17:22A-45(d). Shah had 10 days to move to vacate Order No. E19-31, which he now does.

On April 22, 2019, Shah wrote to the Department asking that he not be subject to penalties and that the suspension of his producer license be lifted. This request is being treated as a motion to vacate or reconsider Order No. E19-31. On April 29, 2019, DAG Fitzgerald responded that Shah's request that the suspension of his license be lifted should be denied because Shah failed to provide a basis to lift the suspension.

## LEGAL DISCUSSION

Shah has failed to satisfy the legal standard necessary to vacate or reconsider a judgment and, therefore, his request that the Order suspending his license pending administrative proceedings, be vacated or reconsidered is DENIED.

The Commissioner has the inherent power to reopen and reconsider her decisions as well as correct her own judgments. Duvin v. State, 76 N.J. 203 (1978). While not controlling on administrative agencies, the Rules of Court applicable in Superior Court matters have been used to guide similar issues that arise in administrative proceedings, recognizing that administrative agencies possess the power, comparable to the courts pursuant to R. 4:50-1, to reopen judgments and final decisions in the interests of justice, with good cause shown. Beese v. First National Stores, 52 N.J. 196 (1968); Stone v. Dugan Brothers of N.J., 1 N.J. Super. 13 (App. Div. 1948). The power of an administrative agency head to reopen or modify a Final Order must be exercised reasonably, and the application to do so must be made with reasonable diligence. Duvin, 76 N.J. at 207 (citing Skulski v. Nolan, 68 N.J. 179 (1975)).

### Motion for Reconsideration

Motions for Reconsideration are granted only where: "(1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Fusco v. Bd. of Educ. of the City of Newark, 349 N.J. Super. 455, 462 (App. Div. 2001), certif. denied, 174 N.J. 544 (2002) (citing D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)); R. 4:49-2; accord Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996).

With these rules in mind, I find that Shah has not established grounds to be relieved from the Order. Shah admitted that he altered an insurance certificate and pled guilty to forgery in the

fourth degree under N.J.S.A. 2C:21-1(a)(1), and that he served one-year of probation and performed community service. He indicated that at the time his son-in-law was diagnosed with leukemia. Shah stated that his son-in-law has since passed and he and his wife, who is also in poor health, provide financial assistance to their daughter and grandson. Shah states that his only financial support comes from social security and rental income. Shah states that it was poor judgment that led him to alter an insurance certificate, for which he is sorry. Shah further states that he should not be subject to further punishment because he has already incurred a financial burden and, despite his poor judgment, is “an exemplary individual.” Shah also provided letters from community members attesting to his good deeds and character.

These arguments do not satisfy the standard set forth above. Shah has failed to demonstrate that the Order was based upon a palpably incorrect or irrational basis or that there was a failure to consider, or appreciate the significance of probative, competent evidence. Rather, Shah admitted to the conduct for which his license was suspended pending administrative proceedings.

#### Motion to Vacate

R. 4:50-1 provides the following guidance in determining whether to provide relief from a judgment or order:

On motion with briefs, and upon such terms that are just, the court may relieve a party . . . from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective

application; or (f) any other reason justifying relief from the operation of the judgment or order.

In considering subparagraph (a) in the rule, the New Jersey Supreme Court has noted “[t]he four identified categories . . . when read together, as they must be, reveal an intent by the drafters to encompass situations in which a party, through no fault of its own, has engaged in erroneous conduct or reached a mistaken judgment on a material point at issue in the litigation.” DEG, LLC v. Township of Fairfield, 198 N.J. 242, 262 (2009). Moreover, the mistakes contemplated under the rule are intended to provide relief to a party from litigation errors that a party could not have protected against. Id. at 263. “A party who simply misunderstands or fails to predict the legal consequences of his deliberate acts cannot later, once the lesson is learned, turn back the clock to undo those mistakes.” Ibid. Additionally, “[e]xcusable neglect may be found when the default was attributable to an honest mistake that is compatible with due diligence or reasonable prudence.” US Bank Nat. Ass’n v. Guillaume, 209 N.J. 449, 468 (2012) (citing Mancini v. EDS, et al., 132 N.J. 330 (1993)). Moreover, R. 4:50-1(f) authorizes relief from judgments “only when truly exceptional circumstances are present.” Id. at 395 (quoting Manning Eng’g, Inc. v. Hudson County Park Com’n, 74 N.J. 113, 120 (1997)).

Shah did not move to vacate the Order within 10 days as provided, nor did he not provide any justification for why his motion was filed late. Further, Shah has failed to set forth a meritorious defense to warrant relief from the suspension of his license.

As noted above, Shah admitted that he altered an insurance certificate and pled guilty to forgery in the fourth degree under N.J.S.A. 2C:21-1(a)(1), and that he served one-year of probation and performed community service. He also notes his financial burden, the passing of his son-in-law, and provides letters from people in the community whom he has helped.

Shah's arguments as to why the Order should be vacated and the suspension of his license be lifted do not satisfy the standard set forth in R. 4:50-1. Specifically, Shah has failed to demonstrate excusable neglect, or present new evidence or exceptional circumstances that would justify vacating the Order, as he essentially admitted to the violations contained in OTSC E19-13. As this matter has been transmitted to the Office of Administrative Law for a hearing, Shah will still have the opportunity to present a defense and argue against license revocation, and other monetary penalties and costs.

CONCLUSION

As set forth above, Shah has not demonstrated good cause to support the entry of an order vacating or reconsidering Order No. E19-31. Accordingly, Shah's Motion is DENIED.

6/3/19  
Date

Marlene Caride  
Marlene Caride  
Commissioner

JD Shah Order denying mtn to vacate suspension/Orders