ORDER NO.: E21-10

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DOCKET NO.: BKI-13161-15
AGENCY DOCKET NO.: OTSC #E15-75

MARLENE CARIDE,[1] COMMISSIONER, NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE,	)	
Petitioner,	)	
v.	)	FINAL DECISION AND ORDER
ADVOCATE PUBLIC ADJUSTERS AND SHANNON RENEE BELLAMY,	)	
Respondents.	)	

This matter comes before the Commissioner of the Department of Banking and Insurance ("Commissioner") pursuant to the authority of N.J.S.A. 52:14B-1 to -31, N.J.S.A. 17:1-15, the New Jersey Public Adjusters' Licensing Act, N.J.S.A. 17:22B-1 to -20, ("Public Adjusters' Act") and all powers expressed or implied therein, for the purposes of reviewing the February 26, 2020 Initial Decision of Administrative Law Judge Jacob S. Gertsman ("ALJ Gertsman") ("Initial Decision").[2] The Initial Decision incorporates the September 26, 2017 Order Granting Partial

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[1] Pursuant to R. 4:34-4, Commissioner Marlene Caride has been substituted in place of former Commissioner Richard J. Badolato in the caption.

[2] On February 26, 2020, ALJ Gertsman issued two initial decisions in this matter. The first initial decision inadvertently included the following language: "This order may be reviewed by COMMISSIONER OF THE DEPARTMENT OF BANKING AND INSURANCE, either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6." The Amended Initial Decision corrected this language and included the following:

> I hereby FILE my initial decision with COMMISSIONER OF THE DEPARTMENT OF BANKING AND INSURANCE for consideration.

Summary Decision ("PSD") issued by the former Acting Director and Chief Administrative Law Judge Laura Sanders ("ALJ Sanders"), which granted a Motion for Summary Decision brought by the Department of Banking and Insurance ("Department").

In the PSD, ALJ Sanders found for the Department and against Respondents Advocate Public Adjusters ("APA") and Shannon Renee Bellamy ("`Bellamy") (collectively, "Respondents") on Counts One through Five, as alleged in Order to Show Cause No. E15-75 ("OTSC"). ALJ Sanders recommended that the Respondents be jointly and severally liable for fines in the amount of $5,000 in relation to Count One of the OTSC, $8,000 in relation to Count Two of the OTSC, $12,250 for forty-nine violations in relation to Count Three of the OTSC, $2,000 in relation to Count Four of the OTSC, and $8,750[3] in relation to Count Five of the OTSC.

> This recommended decision may be adopted, modified or rejected by the COMMISSIONER OF THE DEPARTMENT OF BANKING AND INSURANCE, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Banking and Insurance does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.
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> Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the ASSISTANT COMMISSIONER, LEGISLATIVE AND REGULATORY AFFAIRS, DEPARTMENT OF BANKING AND INSURANCE, PO Box 325, Trenton, New Jersey 08625-0325, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

There appears to be no other difference between the two Initial Decisions. As such, the Initial Decision referenced throughout this Final Decision and Order will be the Amended Initial Decision.

[3] ALJ Sanders stated that, in relation to Count Five of the OTSC, the Department sought a monetary civil penalty of $9,250 for thirty-seven violations. PSD at 16. ALJ Sanders stated that the Department did not prove two of the thirty-seven violations and therefore, the civil monetary penalty should be $8,750, which would account for $250 per each of the thirty-five contractor contracts. Ibid. However, in the "ORDER" section of the PSD, ALJ Sanders recommended the imposition of a civil monetary penalty of $9,000 in relation to Count Five of the OTSC, which

PSD at 16. ALJ Sanders also recommended that Respondent APA be solely liable for a fine in the amount of $250 in relation to one unsigned contract referenced in Count Three of the OTSC. Ibid. Lastly, ALJ Sanders recommended that the Respondents be jointly and severally liable for total restitution in the amount of $27,516.72. Ibid. ALJ Sanders made no recommendation related to the suspension or revocation of the Respondents' public adjuster licenses and noted that Count Six remained unresolved pending a hearing. Ibid.

In the Initial Decision, ALJ Gertsman found for the Department and against the Respondents on Count Six, as alleged in the OTSC, and recommended that the Respondents be held jointly and severally liable for a fine in the amount of $9,500 for the thirty-eight violations[4] in relation to Count Six of the OTSC and $275 for the costs of investigation. Initial Decision at 13-14. ALJ Gertsman incorporated the PSD into the Initial Decision and affirmed the imposition of monetary penalties recommended by ALJ Sanders against the Respondents. Id. at 14. Lastly, ALJ Gertsman recommended the revocation of the Respondents' public adjuster licenses. Id. at 14.

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would account for $250 for thirty-six contradictory and misleading contracts. Ibid. In her analysis of this Count, ALJ Sanders stated that thirty of the contracts presented contain the same contradictory and misleading language offered by the Department in the OTSC, but only specifically lists twenty-nine contracts. Id. at 7. It appears that ALJ Sanders inadvertently omitted one contract with G.L., marked as DOBI-0068. As ALJ Sanders did not make any specific findings related to contract DOBI-0068, the penalty amount for the thirty-five contracts she did specifically find for will be referenced as her recommendation in this Final Decision and Order.

[4] Count Six of the OTSC issued in this matter references thirty-seven contracts; however, the Initial Decision discusses six instances where the Respondents recovered more than the insureds, and thirty-two instances where the Respondents recovered a fee higher than permitted by the contract. Initial Decision at 5 and 11. One instance, for M.W. does not include a contract and only a settlement statement, as the Respondents failed to supply the Department with a copy of M.W.'s contract. Thus, while there are only thirty-seven actual contracts at issue in Count Six of the OTSC, ALJ Gertsman found for thirty-eight separate violations.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On July 18, 2015, the Department issued the OTSC against the Respondents, which sought to revoke the Respondents' public adjuster licenses and impose civil monetary penalties, costs of investigation, and restitution for alleged violations of the Public Adjusters' Act. In the OTSC, the Department alleges that the Respondents engaged in the following activities in violation of the insurance laws of this State:

> Count One: Between December 18, 2012 through January 23, 2013, Respondent APA, through Respondent Bellamy, entered into at least five contracts with New Jersey insureds without being licensed by the Commissioner, in violation of N.J.S.A. 17:22B-3(a) and (b); N.J.S.A. 17:22B-14(a)(1), (4), and (5); and N.J.A.C. 11:1-37.14(a)(1), (4), (5), and (13);
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> Count Two: Between January 8, 2014 through June 6, 2014, Respondent APA, through Respondent Bellamy, entered into eight contracts with New Jersey insureds between 6:00 p.m. and 8:00 a.m. during the twenty-four hours after the loss occurred, in violation of N.J.S.A. 17:22B-13(b); N.J.S.A. 17:22B-14(a)(1) and (4); and N.J.A.C. 11:1-37.13(d);
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> Count Three: Between December 2012 through July 2014, Respondent APA, through Respondent Bellamy: (1) entered into at least forty-two public adjuster contracts with New Jersey insureds that did not prominently include a section that specified the procedures by which an insured may cancel the contract (2) entered into at least seven public adjuster contracts with New Jersey insureds that did not contain the time that the contract was executed, and (3) entered into a contract that did not contain the signature of the licensed public adjuster, in violation of N.J.S.A. 17:22B-14(a)(1) and (4); N.J.A.C. 11:1-37.13(b)(3)(i) and (iii); N.J.A.C. 11:1-37.13(b)(5)(i), (ii), and (iii); and N.J.A.C. 11:1-37.14(a)(1), (4), and (17);
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> Count Four: Respondent APA, through Respondent Bellamy, entered into at least four[5] contracts with New Jersey insureds and failed to adhere to the compensation provisions of each of its own contracts with those insureds,

[5] Although the OTSC references four contracts with the following New Jersey insureds: G.D, T.S., S.D., and O.F., the Department only seems to have presented evidence related to three of those contracts: G.D., T.S., and O.F. It is unclear whether the Department had dropped allegations relating to the contract with S.D. However, ALJ Sanders only discussed the three contracts with G.D., T.S., and O.F., in the PSD.

> in violation of N.J.S.A. 17:22B-13(c); N.J.A.C. 17:22B-14(a)(1) and (4); N.J.A.C. 11:1-37.13(a); and N.J.A.C. 11:1-37.14(a)(1), (4), and (17);
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> Count Five: Between December 2012 through July 2014, Respondent APA, through Respondent Bellamy, entered into at least thirty-seven public adjuster contracts with New Jersey insureds wherein the Respondents failed to clearly define the amount or extent of the Respondents' compensation for public adjuster services, in violation of N.J.S.A. 17:22B-13(c); N.J.S.A. 17:22B-14(a)(1) and (4); N.J.S.A. 56:12-2; N.J.A.C. 11:1-37.13(a), N.JA.C. 11:1-37.14(a)(1), (4), (14), and 17; N.J.A.C. 11:1-37.13(b)(4); and
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> Count Six: Between December 2012 through July 2014, Respondent APA, through Respondent Bellamy, entered into at least thirty-seven public adjuster contracts with New Jersey insureds wherein the Respondents' fee structure for public adjuster services provided the potential for the Respondents collecting more than 100% of the amount ultimately secured by the insureds, the Respondents collected two separate fees for recoverable depreciation, and the fee structure in those contracts was not reasonably related to the services rendered, in violation of N.J.S.A. 17:22B-13(c); N.J.S.A. 17:22B-14(a)(1) and (4); N.J.A.C. 11:1-37.13(b)(3)(ii); and N.J.A.C. 11:1-37.14(a)(1), (4), and (17).

On August 10, 2015, the Respondents filed an Answer to the OTSC, wherein the Respondents denied all 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") pursuant to N.J.S.A. 52:14B-1 to -31 and N.J.S.A. 52:14F-1 to -23, where it was filed on August 25, 2015.

During a telephone conference on December 1, 2016, the parties agreed to a schedule for the filing of and response to a motion for partial decision. PSD at 2. On January 1, 2017, the Department's Motion for Summary Decision on five of the six counts in the OTSC was filed with the OAL. Ibid. Although the Respondents' opposition was due on February 17, 2017, they made no filing by that date. Ibid. On July 27, 2017, the Respondents were notified that absent a response to the Department's Motion, the Motion would be decided based solely on Department's filings. Ibid. The Respondents again failed to submit opposition to Department's Motion. Ibid.

On September 27, 2017, ALJ Sanders issued an Order granting partial summary decision to the Department in relation to Counts One through Five of the OTSC. ALJ Sanders recommended that the Respondents be jointly assessed civil monetary penalties in the total amount of $31,250 and restitution in the total amount of $27,516.72. Id. at 16. ALJ Sanders also recommended that Respondent Bellamy be solely assessed a fine in the amount of $250 in relation to one unsigned contract referenced in Count Two of the OTSC. Ibid. ALJ Sanders made no recommendation related to the suspension or revocation of the Respondents' public adjuster licenses and noted that Count Six remained unresolved pending a hearing. Ibid.

On October 19, 2017, the Respondents filed a Motion for Reconsideration, arguing that there is no legal right for a consumer to cancel a contract past the three-day right to cancel that is contained in the contract. Initial Decision at 2. The Respondents also argued that the determination of the penalty is so severe that it would bankrupt the Respondents. Ibid. On November 3, 2017, the Department filed its response and argued that there is no provision for reconsideration of a decision. Ibid. On December 26, 2017, ALJ Sanders issued an Order denying the Respondents' Motion for Reconsideration and found that while the OAL retains the ability to consider evidence related to Count Six of the OTSC, the regulations prohibit reconsideration or the reopening of the record after the summary decision had been granted on the first five Counts as set forth in the OTSC. Ibid. ALJ Sanders noted that pursuant to N.J.A.C. 1:1-18.5(b), a motion to reopen a hearing after an initial decision has been filed must be addressed to the agency head.

The matter was subsequently reassigned to ALJ Gertsman and following several status conferences, the parties agreed to file cross-motions for summary decision related to Count Six of the OTSC. Ibid. Both cross-motions were filed on June 7, 2019. Ibid. On June 12, 2019, the Respondents filed a response to the Department's Motion, and on June 16, 2019, the Department

filed a response to the Respondent's Motion. Ibid. On August 2, 2019, oral argument was held. Ibid. At the request of ALJ Gertsman, on August 21, 2019, the Department resubmitted the charts from its June 7, 2019 brief, including more specific citations for the contracts at issue. Ibid. The Department's summation brief was filed on September 12, 2019 and the Respondents' summation brief was filed on September 16, 2019. Id. at 2-3. The Department filed its reply brief on September 20, 2019. Id. at 3.

On February 26, 2020, ALJ Gertsman issued an Initial Decision that granted summary decision to the Department and denied the Respondents' Motion for Summary Decision in relation to Count Six of the OTSC. ALJ Gertsman incorporated the PSD into the Initial Decision and affirmed the imposition of the monetary penalties recommended by ALJ Sanders against the Respondents. Id. at 14-15. In relation to Count Six of the OTSC, ALJ Gertsman recommended that the Respondents be jointly assessed a civil monetary penalty of $9,500 and costs of investigation in the amount of $275. Id. at 13. Lastly, ALJ Gertsman recommended the revocation of the Respondents' public adjuster licenses. Id. at 15.

On March 11, 2020, the Department submitted Exceptions to the Initial Decision. The Respondents filed their Exceptions to the Initial Decision on October 9, 2020, after being granted several extensions. Pursuant to the Respondents' extension requests, the Department was granted an extension to file its Reply to the Respondents' Exceptions. On November 16, 2020, the Department filed its Reply.[6]

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[6] On April 14, 2020, Governor Phil Murphy signed Executive Order 127 (2020) ("EO 127"). EO 127 extends any pending deadline for adopting, rejecting, or modifying a decision on contested cases under N.J.S.A. 52:14B-10(c). As such, the timeframes required to adopt, reject, or modify this Initial Decision were tolled for the length of the Public Health Emergency, beginning on March 9, 2020, that was declared pursuant to Executive Order 103 (2020) and subsequently extended, plus ninety days.

ALJ'S FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS

The ALJs both noted that pursuant to N.J.A.C. 1:1-12.5(b) 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 challenged and that the moving party is entitled to prevail as a matter of law." PSD at 10 and Initial Decision at 10. ALJ Sanders noted that the rule provides that an adverse party must respond by affidavit setting forth specific facts showing that there is a genuine issue that can only be determined at an evidentiary hearing. PSD at 10. Further, the ALJs 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.

PSD at 10 and Initial Decision at 10. (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). ALJ Gertsman stated that R. 4:46-2(c) provides further guidance regarding whether the Brill standard has been met in a case. Initial Decision at 10. R. 4:46-2(c) provides that

> An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

In light of this standard, ALJ Sanders issued a Partial Summary Decision on September 26, 2017, wherein ALJ Sanders found the Department prevailed as a matter of law on Counts One, Two, Three, Four, and Five of the OTSC. PSD at 16. ALJ Gertsman additionally found that the Department prevailed as a matter of law on Count Six of the OTSC. Initial Decision at 12.

The ALJs found the following relevant facts in their grant of summary decision.[7]

Count One

ALJ Sanders stated that the Department alleged in Count One of the OTSC that through Bellamy, APA, which was not licensed by the Commissioner, entered into at least five contracts with New Jersey insureds. PSD at 2. ALJ Sanders stated that the documents speak for themselves and determined that Bellamy was first licensed as a resident public adjuster in New Jersey on December 18, 2012, and APA was first licensed a few months later on February 5, 2013. Id. at 2-3. The ALJ additionally stated that after Bellamy was licensed, but before APA was licensed, APA entered into at least five public adjuster contracts dated December 18, 2012; December 26, 2012; January 7, 2013; January 15, 2013; and January 23, 2013. Id. at 2. In each instance, Bellamy signed the line that stated, "Accepted by APA." Ibid. ALJ Sanders found that APA entered into five contracts in advance of licensure, and that Bellamy enabled those actions by signing on behalf of the company. Id. at 3.

ALJ Sanders found that the Department had demonstrated that APA entered into five contracts for adjustment work prior to its licensure in this State and that Bellamy enabled the execution of the contracts by signing on behalf of APA. Id. at 11. Accordingly, ALJ Sanders found that the Department had proven that the Respondents violated N.J.S.A. 17:22B-3(a), which

[7] The Department included multiple contracts and settlement statements in this matter that are attached to the Certification of Daxesh Patel. ALJ Sanders and ALJ Gertsman relied upon these exhibits in their grants of summary decision. It is noted that many of the contracts and Settlement Statements are duplicated throughout the exhibits attached to the Certification of Daxesh Patel and therefore, many of the same contracts or settlement statements have different bates stamped numbering. As an example, the same contract for O.F. is labeled DOBI-0010, DOBI-0034, and DOBI-0078. Because this can be confusing, this Final Decision and Order will only reference the bates numbers referenced by the ALJs in this matter and will not reference the bates numbering for the exhibit duplications. It is unclear why the Department included these duplications in the exhibits.

provides that "[n]o individual, firm, association, or corporation shall act as an adjuster in this State unless authorized to do so by virtue of a license issued or renewed pursuant to this act," and N.J.S.A. 17:22B-3(b), which prohibits an adjuster from acting "on behalf of an insured unless licensed as a public adjuster." Ibid.

Count Two

ALJ Sanders stated that the Public Adjuster Licensing Act and the accompanying regulations bar licensees from entering into agreements with insureds between the hours of 6:00 p.m. and 8:00 a.m. within the twenty-four hours after a loss occurs. Id. at 3. ALJ Sanders stated that the Department contended that APA entered into eight public-adjuster contracts with insureds in the statutory "no-contracting" period and provided copies of the following contracts to support its contention:

- A January 8, 2014 contact with E.L., signed on January 8, 2014 at 7:20 p.m. for a loss that occurred on or about January 8, 2014;
- A January 14, 2014 contract with E.L., signed on January 14, 2014 at 7:12 p.m. for a loss that occurred on or about January 14, 2014;
- A January 23, 2014 contract with R.T., signed on January 23, 2014, at 6:56 p.m. for a loss that occurred on or about January 23, 2014;
- A February 8, 2014 contract with L.M., signed on February 8, 2014 at 6:25 p.m. for a loss that occurred on or about March 5, 2014;
- A March 5, 2014 contract with J.G., signed on March 5, 2014, at 6:50 p.m. for a loss that occurred on or about March 5, 2014;
- Two April 14, 2014 contracts with C.I., signed on April 14, 2014 at 8:00 a.m. for losses that occurred on or about April 13, 2014;
- A June 6, 2014 contract with L.S., signed on June 6, 2014 at 7:30 p.m. for a loss that occurred on or about June 6, 2014;

Id. at 3-4.

ALJ Sanders stated that no evidence was offered to demonstrate that any of the above-referenced contracts were entered into more than twenty-four hours after the losses occurred. Id. at 4. Accordingly, ALJ Sanders found that all eight of the referenced contracts were entered into before the passage of twenty-four hours following the claimed loss. Ibid. ALJ Sanders additionally found that Bellamy signed each of the eight referenced contracts on behalf of APA, thereby participating in the creation of the contracts during the prohibited time period. Ibid.

Therefore, ALJ Sanders concluded that the Department had proven that the Respondents violated N.J.S.A. 17:22B-13(b), which prohibits any individual, firm, association, or corporation licensed under the Public Adjusters' Act from entering into "any agreement, oral or written, with an insured to negotiate or settle claims for loss or damage occurring in this State between the hours of six p.m. and eight a.m. during the 24 hours after the loss has occurred." Id. at 11. ALJ Sanders also concluded that the Department had proven that the Respondents violated N.J.A.C. 11:1-37.13(d), which provides that "[n]o public adjuster shall enter into any contract or agreement, oral or written, with an insured, to negotiate or settle claims for loss for damage occurring in this State between the hours of 6:00 P.M. and 8:00 A.M. during the 24 hours after the loss has occurred." Ibid. ALJ Sanders noted that the reasoning behind N.J.A.C. 11:1-37.13(d) at the time of its adoption was to ensure that clients "are not subjected to such solicitations during times immediately following an insured loss when, in many cases, consumers are preoccupied with more immediate concerns." Ibid. (citing 44 N.J.R. 32(a) (January 3, 2012)). Lastly, ALJ found that the Respondents solicitation during the prohibited period is an act of incompetency and bad faith, especially when coupled with the absence of language explaining that the consumer could get out of the contract at any time, and is therefore, a violation of N.J.S.A. 17:22B-14(a)(4), which allows the Commissioner to suspend or revoke a license if the Commissioner determines that a licensee

has "demonstrated his, or its, incompetency, lack of integrity, bad faith, dishonesty, financial irresponsibility, or untrustworthiness to act as an adjuster." Id. at 11-12.

Count Three

ALJ Sanders stated that the Department alleged that in 2014, APA entered into a series of contracts that violated the law and regulations of this State by failing to include required language. Id. at 4. The Department contended that APA entered into forty-two contracts that lacked a section that must note prominently the procedures for cancellation. Ibid. The missing language included (1) the requirement of written notice, (2) the rights and obligations of the parties if the contract is cancelled at any time, and (3) the costs to the insured or the formula for the calculation of costs to the insured for services rendered in whole or in part. Ibid.

ALJ Sanders stated that forty-two contracts were offered as an exhibit to the certification of Daxesh Patel, an investigator for the Department, ("Patel Cert.") in pages marked DOBI-0031 through DOBI-0072. Ibid. ALJ sanders concluded that all of the contracts showed that they use the following language:

> You have the right to cancel this contract at any time before midnight of the third business day after the date above. Should you cancel this contract, you are obligated by this contract to reimburse or pay for reasonable and necessary emergency and out-of-pocket expenses or services which were paid for or incurred by "APA" to protect your property during the period between signing of this contract and cancellation.

Ibid. ALJ Sanders stated that the above language appears to be in the same type font as most of the one-page agreement. Id. at 5. Below this language in the agreement, there appears a clause in boldfaced italic font that provides that "This contract contains all promises and agreements between you and 'APA' and can only be changed by an agreement in writing by both parties." Ibid.

ALJ Sanders found as fact that the clause in the contract that states that the contract can only be changed by written agreement is prominently displayed in the contract. Ibid. Moreover, ALJ Sanders found that although it is not prominent in the contract, the contract does clearly state that the insured may cancel the contract within three business days, and therefore, it is reasonably clear that an insured must provide written notice within three business days to cancel the agreement. Ibid. However, the ALJ found that the language does not tell the insured what APA's obligations are in the event of cancellation. Ibid. Particularly, ALJ Sanders noted that the contractual language did not set forth expenses that may be incurred by APA on behalf of the insured, and it is not clear whether the insured is expected to reimburse APA only for emergency expenses and services or all expenses and services connected to servicing the claim. Ibid. Lastly, ALJ Sanders found that the language does not make it clear that the individual insured is free to cancel at any time and not just within the three business days set forth in the above-referenced language. Ibid.

ALJ Sanders noted that the Department also alleged that the seven public adjuster contracts did not contain the time the contract was executed. Ibid. ALJ Sanders stated that the Patel Cert. includes contracts entered into on December 18, 2012, (DOBI-0079) December 26, 2012 (DOBI-0078), January 7, 2013 (DOBI-0075), January 15, 2013 (DOBI-0077), January 23, 2013 (DOBI-0076), May 28, 2014 (DOBI-0074), and June 11, 2014 (DOBI-0073), which speak for themselves. Ibid. Therefore, ALJ Sanders found that these seven referenced contracts lacked the time of execution. Ibid.

ALJ Sanders additionally stated that the Department contended that one contract, dated May 28, 2014 (DOBI-0080), lacked a signature by anyone binding APA. Ibid. ALJ Sanders

found that the referenced contract also speaks for itself and has an empty signature line for "Accepted by APA." Ibid.

ALJ Sanders, therefore, concluded that the Department had proven that fifty contracts failed to include required language, information, or signatures. Id. at 13. Specifically, ALJ Sanders concluded that forty-two contracts had a form of instruction regarding cancellation that fell short because the rights and obligations of the parties were not clearly spelled out and the costs to the insureds for services rendered were, in whole or in part, unclear. Id. at 12. Thus, ALJ Sanders found that the Respondents violated N.J.A.C. 11:1-37.13(b)(5), which provides that public adjuster contracts must include a section which specifies: (i) the procedures to be followed by the insured to cancel the contract, including any requirement for written notice; (ii) the rights and obligations of the parties if the contract is cancelled at any time; and (iii) the costs to the insured or the formula for the calculation of costs to the insured for services rendered. Ibid.

ALJ Sanders also concluded that the Department had proven that the Respondents entered into seven contracts in which no time was included, in violation of N.J.A.C. 11:1-37.13(b)(3)(iii), which requires that contracts contain the time and the day, month, and year of the execution of the contract. Ibid. ALJ Sanders noted that the purpose of this regulation is to enable the enforcement of the statutory prohibition on solicitation between the hours of 6:00 p.m. and 8:00 a.m. during the twenty-four hours after an insured has suffered a loss. Ibid.

Lastly, ALJ Sanders found that the Department had demonstrated that there was no signature for APA on one contract, and therefore, APA violated N.J.A.C. 11:1-37.13(b)(3)(i), which requires that the written contract between a licensed public adjuster and an insured contain a signature of the insured and public adjuster. Id. at 12-13.

Count Four

ALJ Sanders stated that the Department alleged that on three occasions, APA collected more money from the insured than allowed under the terms of the contract with the insured. Id. at 6. The Department provided three contracts between the Respondents and O.F. (DOBI-0010), G.D. (DOBI-0011), and T.S. (DOBI-0012). Ibid. The Patel Cert. cited to settlement statements for O.F. (DOBI-0202), G.D. (DOBI-0199), and T.S. (DOBI-0195) and calculated that the difference between the fee that should have been collected based upon the insurance company's actual award, and the thirty percent of gross award that the Department alleged APA actually collected was $2,517.64. Ibid.

ALJ Sanders stated that DOBI-0203, not DOBI-0202 set forth above, related to a "wind-driven-rain" claim that matches what the contract with O.F (DOBI-0010) cites as the cause of the loss. Ibid. ALJ Sanders stated that the total award was $1,266.28, and the settlement statement indicated that APA collected a $250 administrative fee. Ibid. ALJ Sanders stated that in May of the same year, the same couple received a total negotiated award of $25,790.52 (DOBI-0202), which appears to have been used in Exhibit E to calculate payments. Ibid. However, ALJ Sanders noted that the Department failed to point to an associated contract. Ibid. Therefore, ALJ Sanders concluded that because DOBI-0203 did not appear to have involved an overcharge and the contract related to DOBI-0202 is not known, the Department failed to prove the existence of a problem with this set of payments. Ibid.

ALJ Sanders additionally noted that the chart in Exhibit E of the Patel Cert. cited to the settlement statement for G.D. (DOBI-0199) that is related to a "wind-driven-rain" contract, presented as DOBI-0011, that was signed on January 7, 2013. Ibid. ALJ Sanders stated that the settlement statement, which indicated that the claim was for a windstorm, utilized a twenty-five percent adjuster fee, taken from the total damage amount of $5,062.66. Ibid. However, the

contract stated that G.D. had agreed to pay twenty-five percent "of the total insurance settlement proceeds paid" by the insurance company. Ibid. Based upon the foregoing, ALJ Sanders found that the Department had proven that G.D. was charged more than what was agreed to in the contract, and that the difference between what G.D. was charged and what G.D. should have been charged was $323.71. Ibid.

Lastly, ALJ Sanders noted that DOBI-0012 is a contract with T.S. related to a claim for windstorm damage from Superstorm Sandy, which was entered into on January 15, 2013. Ibid. ALJ Sanders stated that DOBI-1095 is a settlement statement for T.S. that related to loss as a result of an October 29, 2012 windstorm. Ibid. The settlement statement showed an adjuster fee of $2,819.85, which is thirty percent of the $9,399.51 full settlement amount. Id. at 6-7. The ALJ found that because the contract stated that a fee of thirty percent of the "total insurance settlement proceeds paid to you" was required, T.S. was overcharged by $805.65. Id. at 7.

ALJ Sanders stated that, in relation to Count Four of the OTSC, the Department had demonstrated that in two instances, the Respondents collected a percentage of the total damage, as opposed to a percentage of what the insurance company paid after considering depreciation and deductibles. Id. at 13. She further noted that the since the contracts agreed that the clients would pay a percentage "of the total insurance settlement proceeds paid . . . by [the] insurance company," the Respondents overcharged their clients. Ibid. Therefore, ALJ Sanders concluded that the Respondents violated N.J.A.C. 11:1-37.14(a)(8), which prohibits licensed adjusters from collecting "from any client any fee other than that agreed to in the employment contract in a form required by N.J.A.C. 11:1-37.13."[8] Ibid. ALJ Sanders also found that the Respondents charging

[8] The OTSC does not allege that the Respondents violated N.J.A.C. 11:1-37.14(a)(8) in relation to Count Four, but does allege that the Respondents violated N.J.A.C. 11:1-37.13(a), which provides that

insureds in excess of the contractual amount demonstrates incompetency, financial irresponsibility, and untrustworthiness as adjusters, in violation of N.J.S.A. 17:22B-14(a)(4) and N.J.A.C. 11:1-37.14(a)(4), which allows the Commissioner to suspend or revoke a license if the Commissioner determines that a licensee has "demonstrated his, or its, incompetency, lack of integrity, bad faith, dishonesty, financial irresponsibility, or untrustworthiness to act as an adjuster," and N.J.A.C. 11:1-37.17.[9] Ibid.

Count Five

ALJ Sanders noted that the Department alleged in Count Five of the OTSC that between December 2012 and July 2014, APA entered into thirty-seven contracts with insureds that quoted fee amounts that were internally contradictory. Id. at 7. The Department further alleged that the contradictory fee amounts made it difficult for clients to determine whether they were being charged fairly under the contract. Ibid. ALJ Sanders stated that the Department's brief provides that the thirty-seven contracts appear at DOBI-0036 through -0072 and all contain the following language:

> You agree to and promise to pay "APA" a fee for the services it provides for you. This fee is equal to 30% of the total insurance settlement proceeds paid to you by your insurance company and is due and payable from each insurance check or draft in the percentage listed herein.

Ibid. The next paragraph in the contracts states in language that is italicized that:

> No individual, firm, partnership, association or corporation licensed under this subchapter shall have any right to compensation from any insured for or on account of services rendered to an insured as a public adjuster unless the right to compensation is based upon a written contract or memorandum between the adjuster and the insured and specifying or clearly defining the services to be rendered and the amount or extent of the compensation.

[9] N.J.A.C 11:1-37.17 relates to public records and was not alleged as a violation in the OTSC in this matter. It is unclear why ALJ Sanders referenced this regulatory citation.

> Commissions are deducted from "FULL SETTLEMENT AMOUNT"**. "Full Settlement Amount" is based on: Dwelling, Contents and Additional Living Expenses and is defined as total "Negotiated Award" before deductions are made, i.e. Depreciation (Non-Recoverable or Recoverable), Deductibles.

Ibid.

However, ALJ Sanders stated that the contracts appearing at DOBI-0036 through -0072 do not all have this same language. Ibid. Specifically, she noted that thirty of these contracts (DOBI-0036 through -0044;[10] DOBI-0047 through -0048,[11] DOBI-0050 through -0052, DOBI-0055 through -0057, DOBI-0059 through -0066, and DOBI-0069 through -0072[12]) do contain the above-stated language. Ibid. ALJ Sanders found that the contractual language for these thirty-referenced contracts speaks for itself. In the first paragraph, APA stated that it will charge thirty percent of the actual monies paid by the insurer, but in the second paragraph, APA states that it will charge thirty percent of the total calculated level of damages, regardless of how much the insurance company actually pays the client after deductions of deductibles and depreciation. Ibid. The ALJ found that these provisions are internally contradictory, and Bellamy participated in creating these thirty inconsistent contracts. Id. at 7-8.

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[10] While ALJ Sanders includes the contract marked as DOBI-0042 in this group on contracts, it contains an additional line not included in this larger group of contracts. Specifically, that line, which is referenced by ALJ Sanders in relation to the contracts marked as DOBI-0049 and DOBI-0053, reads "If the fee is discounted for multiple claims at one time and the additional claim is denied the fee reverts back to 30%."

[11] ALJ Sanders marked this contract as "DOBI-00478." This appears to be a typographical error, and the correct bates number for this contract is DOBI-0048.

[12] While ALJ Sanders stated that thirty contracts contain the contradictory provisions referenced by the Department, she only specifically referenced twenty-nine contracts. It appears that she inadvertently failed to include a contract with G.L., marked as DOBI-0068.

ALJ Sanders noted that two other contracts that are attached to the Patel Cert. as DOBI-0049 and DOBI-0053[13] use the same language in the thirty contracts set forth above but add an additional sentence to the first paragraph. Id. at 8. These two contracts provide:

> . . . You also authorize "APA" to be an additional payee on any check from an insurance company. If the fee is discounted for multiple claims at one time and the additional claim is denied the fee reverts back to 30%. The fee for a supplemental claim is 50% of the supplement awarded or the original fee of the entire award including prior disbursements (*must be approved by management*). [Emphasis Added.]

Ibid. ALJ Sanders stated that these add-on sentences do not alter the problem with the contracts being internally contradictory and make the contract less easy to understand because the difference between a supplemental claim and multiple claims filed at once is not obvious. Ibid. The ALJ found that because Bellamy signed these two contracts, she also participated in creating these two internally inconsistent contracts. Ibid.

ALJ Sanders stated that an additional four contracts contained the same first paragraph, set forth above, which required the client to pay thirty percent of the total insurance settlement proceeds, but then contained the following language in the second paragraph:

> Commissions are deducted from the RCV "Replacement Cost Value," which is also known as "FULL SETTLEMENT AMOUNT" or "TOTAL NEGOITATED [sic] AWARD**. ** "Replacement Cost Value" is the (GROSS AWARD) and is based on: Dwelling, Contents, Electrical, Plumbing, and Additional Living Expenses before deductions are made, i.e., Depreciation (Non-Recoverable or Recoverables) and/or Deductible.

Ibid. ALJ Sanders noted that these contacts were offered by the Department through the Patel Cert. as DOBI-0045, DOBI-0046, DOBI-0058, and DOBI-0067. Ibid. ALJ Sanders found that

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[13] As noted in footnote 10 above, the contract marked as DOBI-0042 should be included in this grouping, rather than in the larger grouping of contracts above.

these four contracts speak for themselves, and like the larger group of contracts detailed above, this group of contracts also required the client to pay for thirty percent of the amount actually paid by the insurance company and thirty percent of the gross award before deductions, which is internally contradictory. Id. at 8 to 9. ALJ Sanders additionally found that as Bellamy signed the contracts on behalf of APA, she enabled the creation of these four contradictory contracts. In total, ALJ Sanders found that there were thirty-six[14] contracts that were contradictory and fell within the Department's allegations in Count Five of the OTSC. Id. at 9.

ALJ Sanders noted that the Department tied an October 23, 2013 contract with M.C. (DOBI-0054) for a "water-leak—toilet" with an October 30, 2013 contract that was also with M.C. (DOBI-0053) for a garbage disposal leak. Ibid. She stated that the water-leak contract had the following language:

> You agree and promise to pay "APA" a fee for the services it provides for you. This fee is equal to 30 percent of the total insurance settlement proceeds paid to you by your insurance company and is due and payable from each insurance check or draft in the percentage listed herein.

Ibid. However, ALJ Sanders stated that there are no additional paragraphs in the contract that addressed payment. Ibid. The Department tied these two contracts to an April 28, 2014 settlement statement involving water loss, which showed that APA took $2,461.98 or thirty percent of the total negotiated award of $8,206.58. Ibid. ALJ Sanders stated that although the customer appears to be the same, it is not clear how the three documents tie together and no findings regarding

[14] While ALJ Sanders stated that she found that there were thirty-six contracts with contradictory language, she only referenced thirty-five contradictory contracts in her analysis. It appears that she inadvertently failed to discuss one of the contracts with G.L. marked as DOBI-0068, attached to the Patel Cert. It should also be noted that ALJ Sanders stated, in several different parts of the PSD, that the Respondents entered into thirty-four, thirty-five, and thirty-six contradictory contracts in relation to Count Five of the OTSC. See PSD at 9, 13, 14, and 16. It is unclear why ALJ Sanders used these differing numbers throughout the PSD.

contract DOBI-0054 were made. Ibid. Additionally, ALJ Sanders stated that it was not clear what part of the settlement statement applied to contract DOBI-0053, and therefore, no difference in customer cost was proven. Ibid.

ALJ Sanders stated that the Department offered a calculation based on the actual fees charged, which were shown on the following settlement statements: DOBI-0090, DOBI-0093 through -100, DOBI-0103 through -0110, DOBI-0113 through -0116, DOBI-0125 through -1027, DOBI-0137 through -0144, DOBI-0151 through -0153, DOBI-0158 through -0171, DOBI-1074, and DOBI-0175. Ibid. The actual fees shown on the settlement statements, which were thirty percent of the total damage level, were then compared to the thirty percent of what the insurer released to the client. Ibid. ALJ Sanders stated that the Department calculated that the insureds paid $27,079.54 more in fees than they would have if thirty percent of the actual award had been utilized. Ibid. However, ALJ Sanders noted that this amount includes the contracts DOBI-0053 and DOBI-0054, which were not clearly tied to a settlement statement by the Department. Ibid. ALJ Sanders calculated this difference to be $692.18 and found that the Department had demonstrated that the Respondents charged $26,387.36 more than the first paragraph of the contracts informed the insureds they would be charged. Id. at 9-10.

ALJ Sanders found that the Respondents entered into thirty-four[15] contracts that gave two different explanations of how much the insured would be charged and then charged the higher

[15] Although ALJ Sanders stated that the Department had proven that thirty-four contracts gave two different explanations of how much the client would be charged, she stated in the PSD that there were also both thirty-five and thirty-six contracts that were contradictory. See PSD at 9, 13, 14, and 16. As noted in footnote 14 above, ALJ Sanders left the contract with G.L., marked as DOBI-0068, out of her analysis, and only found that thirty-five contracts were contradictory. See PSD at 7-9. Because ALJ Sanders did not include DOBI-0068 in her analysis, she never affirmatively made any findings regarding the contradictory nature of this contract. Therefore, ALJ Sanders found that thirty-five contracts gave two different explanations of how much the client would be charged, not thirty-four, as referenced in this section of the PSD.

amount. Id. at 14. Therefore, ALJ Sanders found that given this lack of clarity in the contracts, the Respondents violated N.J.S.A. 17:22B-13(c),[16] which requires that adjusters provide clients with "a written memorandum, signed by the party to be charged and by the adjuster, and specifying or clearly defining the services to be rendered and the amount or extend of the compensation on a form and with such language as the [C]ommissioner may prescribe;" N.J.A.C. 11:1-37.13(a), which provides that a written contract or memorandum must specify or clearly define "the amount or extent of the compensation;" and N.J.A.C. 11:1-37.13(b)4, which requires public adjuster contracts to conform to the requirements of the Consumer Contracts Act, N.J.S.A. 56:12-1 to –101, which requires, at N.J.S.A. 56:12-2, that consumer contracts to be "written in a simple, clear, understandable and easily readable way." Id. at 13-14. Lastly, ALJ Sanders found that because of these acts, the Respondents demonstrated untrustworthiness, in violation of N.J.S.A. 17:22B-14(a)(4), which allows the Commissioner to suspend or revoke a license if the Commissioner determines that a licensee has "demonstrated…incompetency, lack of integrity, bad faith, dishonesty, financial irresponsibility, or untrustworthiness to act as an adjuster," and N.J.A.C. 11:1-37.14(a)4, which allows the Commissioner to suspend or revoke a license upon a demonstration of the licensee's "lack of integrity, incompetency, bad faith, dishonesty, financial irresponsibility, or untrustworthiness to act as a public adjuster." Id. at 14.

Count Six

In relation to Count Six of the OTSC, ALJ Gertsman stated that the Department alleged that the Respondents used a fee structure for public adjuster services that was not reasonably related to the services that were rendered, in violation of the Public Adjusters' Act and regulations.

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[16] Although ALJ Sanders did not include the subsection (c) in her finding, she quoted this subjection and it was additionally alleged in Count Five of the OTSC.

Initial Decision at 3. In support of these allegations, the Department offered the following undisputed material facts, which ALJ Gertsman found as fact in this matter:

- Bellamy was first licensed as resident public adjuster in this State on December 18, 2012;
- APA was first licensed as a resident public adjuster in this State on February 3, 2013;
- At all times, Bellamy has been the owner of APA;
- Between December 2012 through July 2014, APA entered into at least thirty-seven public adjuster contracts with new Jersey insureds in which the insured, in paragraph one of the contract, agreed to pay APA a fee for its services equal to thirty percent or, in some cases, twenty-five percent, of the total insurance settlement proceeds paid to the insured by the insured's insurance company and that amount was due and payable from each insurance check or draft in the percentage listed in that paragraph;
- In the second paragraph of the same thirty-seven contracts referenced above, each contract provides that commissions are deducted from the "FULL SETTLEMENT AMOUNT," and set forth that the full settlement amount is based upon "Dwelling, Contents and Additional Living Expenses and is defined as total 'Negotiated Award' before deductions are made i.e. Depreciation (Non-Recoverable or Recoverable). Deductibles;"
- In the second paragraph of the same thirty-seven contracts referenced above, each contract provides that "Once receipts for the 'Recoverable Depreciation' are submitted the recoverables will be released by the insurance company. [APA] charges $250.00 per $1500.00 Administrative fee to recover recoverables from the insurance company;"
- Bellamy signed all thirty-seven public adjuster contracts on behalf of APA;
- For all thirty-seven contracts, the insureds were charged a thirty percent or twenty-five percent fee based on the full or gross settlement amount, before deductions for depreciation and deductibles were subtracted by each insured's respective insurance company;
- For client C.L., the Respondents collected a fee in excess of the amount ultimately obtained by C.L. Specifically, the Respondents collected a fee of $2,346.58 and C.L. received a benefit of $2,237.65;[17]
- For client L.W., the Respondents collected a fee in excess of the amount ultimately obtained by L.W. Specifically, the Respondents collected a fee of $1,894.70, and L.W. received a benefit of $1,781.60;[18]

[17] The amount received by C.L. was $2,429.74, not $2,237.65.

[18] ALJ Gertsman stated that L.W. received a benefit of $1,226.23; however, this appears to be a typographical error, as this was the amount received by S.G. L.W. received a benefit of $1,781.60.

- For client S.G., the Respondents collected a fee in excess of the amount ultimately obtained by S.G. Specifically, the Respondents collected a fee of $2,284.62, and S.G. received a benefit of $1,226.23;[19]

- For client L.H., the Respondents collected a fee in excess of the amount ultimately obtained by L.H. Specifically, the Respondents collected a fee of $2,163.36, and L.H.[20] received a benefit of $1,722.35;

- For client G.L., the Respondents collected a fee in excess of the amount ultimately obtained by G.L. Specifically, the Respondents collected a fee of $1,196.21, and G.L. received a benefit of $461.52;

- The Respondents prepared a supplemental claim, which resulted in a second insurance payment for client G.L.;[21]

- For this second payment to G.L., the Respondents collected a fee in excess of the amount ultimately obtained by G.L. Specifically, the Respondents received a fee of $3,079.33 and G.L. received a payment of $2,687.46;

- For client O.F., the Respondents charged a twenty-five percent fee based on the full or gross settlement amount, before deductions for depreciation and deductibles were subtracted by the insured's insurance company, and then later charged an additional $250 fee when the insurance company paid out on some of the depreciation amount;

- For many of the Respondents' clients, the Respondents collected a fee that was almost higher than the amount ultimately secured by the respective client, which left the client with a payment that was only slightly higher that the fee the Respondents received; and

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See DOBI-0103 to -104, attached to Patel Cert. at Exhibit C. Therefore, the correct amount has been set forth in the findings of fact summary for this Count.

[19] The amount received by S.G. was $1,226.21, not $1,226.23.

[20] ALJ Gertsman stated that S.G. rather than L.H. received a benefit of $1,722.35 in this paragraph. However, this appears to be a typographical error, as this paragraph related to L.H. rather than S.G., who was discussed in the proceeding paragraph. The correct client has therefore been set forth in the factual finding summary for this Count.

[21] The Respondent had two separate contracts with G.L. The first, marked as DOBI-0068, was for a toilet overflow with a July 15, 2014 date of loss, and the second, marked as DOBI-0069, was for a roof leak also with a July 15, 2014 date of loss. Neither claim is supplemental. These claims are separate claims, under separate contracts.

- The Respondents collected a fee from their insured that exceeded thirty percent of the total insurance settlement proceeds paid to the insured, in contravention of the Respondents' contracts with the insureds who hired the Respondents.

Id. at 3-5.

ALJ Gertsman additionally noted that the Department provided the following contracts in support of the above-referenced findings of fact:

- A contract between the Respondents and client O.F., where the Respondents charged a fee of thirty-seven percent of the actual total amount paid by the insurance company;[22]

- A contract between the Respondents and client T.S., where the Respondents charged a fee of forty-two percent of the actual total paid by the insurance company;[23]

- A contract between the Respondents and client G.D., where the Respondents charged a fee of thirty-four percent of the actual total amount paid by the insurance company;[24]

- A contract between the Respondents and client L.M., where the Respondents charged a fee of forty-three percent of the actual total amount paid by the insurance company;

- A contract between the Respondents and client J.G., where the Respondents charged a fee of forty-one percent of the actual total amount paid by the insurance company;

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[22] It is unclear why the Department added this contract into its Motion for Summary Decision and why ALJ Gertsman included it in his findings of fact and analysis for Count Six of the OTSC. This contract for O.F. was the subject of the allegations contained in Count Four of the OTSC. In fact, the contract is in the older format, used by the Respondents, that does not contain contradictory provisions at issue in Counts Five and Six of the OTSC. The contracts at issue in Count Six of the OTSC should be the same contracts at issue in Count Five of the OTSC.

[23] It is unclear why the Department added this contract into its Motion for Summary Decision and why ALJ Gertsman included it in his findings of fact and analysis for Count Six of the OTSC. This contract for T.S. was the subject of the allegations contained in Count Four of the OTSC. In fact, the contract is in the older format, used by the Respondents, that does not contain contradictory provisions at issue in Counts Five and Six of the OTSC. The contracts at issue in Count Six of the OTSC should be the same contracts at issue in Count Five of the OTSC.

[24] It is unclear why the Department added this contract into its Motion for Summary Decision and why ALJ Gertsman included it in his findings of fact and analysis for Count Six of the OTSC. This contract for G.D. was the subject of the allegations contained in Count Four of the OTSC. In fact, the contract is in the older format, used by the Respondents, that does not contain contradictory provisions at issue in Counts Five and Six of the OTSC. The contracts at issue in Count Six of the OTSC should be the same contracts at issue in Count Five of the OTSC.

- A contact between the Respondents and client J.G., where the Respondents charged a fee of thirty-six percent of the actual total amount paid by the insurance company;

- A contract between the Respondents and client E.L. where the Respondents charged a fee of thirty-six percent of the actual total amount paid by the insurance company;

- A contract between the Respondents and client E.L., where the Respondents charged a fee of thirty-five percent of the actual total amount paid by the insurance company;

- A contract between the Respondents and client L.W., where the Respondents charged a fee of fifty-five percent of the actual total amount paid by the insurance company;

- A contract between the Respondents and client C.I., where the Respondents charged a fee of thirty-nine percent of the actual total amount paid by the insurance company;[25]

- A contract between the Respondents and client C.I., where the Respondents charged a fee of thirty-four percent of the actual total amount paid by the insurance company;[26]

- A contract between the Respondents and client R.T., where the Respondents charged a fee of thirty-five percent of the actual total amount paid by the insurance company;[27]

- A contract between the Respondents and client R.F., where the Respondents charged a fee of forty percent of the actual total amount paid by the insurance company;[28]

- A contract between the Respondents and client B.R., where the Respondents charged a fee of thirty-six percent of the actual total amount paid by the insurance company;[29]

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[25] The correct percentage is fifty percent, not thirty-nine percent.

[26] The correct percentage is forty-eight percent, not thirty-four percent

[27] The correct percentage is fifty-one percent, not thirty-five percent.

[28] There is a supplemental claim for R.F., included on the settlement statement marked as DOBI-0117. This supplemental claim is for the depreciation referenced in the settlement statement marked as DOBI-0115 and for which, the Respondent already claimed a thirty percent fee. On settlement statement DOBI-0017, the Respondents collected an additional $500 for the same monies they previously collected a fee.

[29] There are two contracts for B.R., marked as DOBI-0056 and DOBI-0057. It appears that these two contracts were combined based upon the "Final Disbursement Statement" for both claims, marked as DOBI-0125. The thirty-six percent referenced relates to these combined claims.

- A contract between the Respondents and client M.C., where the Respondents charged a fee of forty-two percent of the actual total amount paid by the insurance company;[30]

- A contract between the Respondents and client L.H., where the Respondents charged a fee of forty-three percent of the actual total amount paid by the insurance company;

- A contract between the Respondents and client A.C., where the Respondents charge a fee of thirty-five percent of the actual total amount paid by the insurance company;

- A contract between the Respondents and client H.E., where the Respondents charged a fee of forty-nine percent of the actual total amount paid by the insurance company;[31]

- A contract between the Respondents and client P.N., where the Respondents charge a fee of forty-five percent of the actual total amount paid by the insurance company;

- A contract between the Respondents and client M.W., where the Respondents charged a fee of forty-three percent of the actual amount paid by the insurance company;

- A contract between the Respondents and client E.M., where the Respondents charged a fee of forty-five percent of the actual total amount paid by the insurance company;[32]

- A contract between the Respondents and client E.M., where the Respondents charged a fee of forty-seven percent of the actual total amount paid by the insurance company;

- A contract between the Respondents and client B.N., where the Respondents charged a fee of forty-two percent of the actual total amount paid by the insurance company;

- A contract between the Respondents and client L.S., where the Respondents charged a fee of thirty-six percent of the actual total amount paid by the insurance company;

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[30] The Respondents entered into two contacts with M.C., marked as DOBI-0053 and DOBI-0054. The contract marked as DOBI-0053 contained contradictory provisions, which would fall under the allegations in this Count; however, the Department did not present a settlement statement for that contract. Therefore, it is unclear how much the Respondents actually charged M.C. and thus, whether their fee was reasonably related to the services render to their client. As it relates to DOBI-0054, which ALJ Gertsman referenced in this factual finding, the contractual language contained therein was not contradictory like the other contracts mentioned in both Count Five and Six of the OTSC and is the older form of the Respondents' contracts that are at issue in Count Four of the OTSC.

[31] There are two contracts for client H.E., marked as DOBI-0060 and DOBI-0061. Under the contract marked as DOBI-0060, the Respondents charged a fee of one-hundred percent of the total amount paid by the insurance company.

[32] There is no contract for M.W. that was presented. The Department only supplied the settlement statement for that client, marked as DOBI-0160.

- A contract between the Respondents and client L.S., where the Respondents charged a fee of thirty-seven percent of the actual total amount paid by the insurance company;

- A contract between the Respondents and client A.S., where the Respondents charged a fee of thirty-eight percent of the actual total amount paid by the insurance company;

- A contract between the Respondents and client W.F., where the Respondents charged a fee of thirty-nine percent of the actual total amount paid by the insurance company;

- A contract between the Respondents and client T.R., where the Respondents charged a fee of forty-two percent of the actual amount paid by the insurance company;

- A contract between the Respondents and client E.M., where the Respondents charged a fee of thirty-nine percent of the actual total amount paid by the insurance company;

- A contract between the Respondents and client G.B., where the Respondents charged a fee of forty-nine percent of the actual total amount paid by the insurance company;

- A contract between the Respondents and client G.B., where the Respondents charged a fee of thirty-seven percent of the actual total amount paid by the insurance company;[33] and

- A contract between the Respondents and client E.B., where the Respondents charged a fee of thirty-eight percent of the actual total amount paid by the insurance company.

Id. at 6-9. ALJ Gertsman noted that the above contracts were included in the Department's June 7, 2019 brief in support of its Motion for Summary Decision. Id. at 6. On August 20, 2019, the Department provided a revised chart with the same information submitted in their June 7, 2019 brief, aside from an additional column that provided the citation for each contract. Ibid.

ALJ Gertsman stated that the Respondents asserted that the Department's calculations regarding the percentages of the recoveries was incorrect because no proof had been provided as to whether the depreciation was paid to the insureds. Id. at 9. The Respondents stated in their summation brief that "[t]he appropriate assumption would be that the individual clients here acted

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[33] The Department only presented one contract and one settlement statement for G.B., marked as DOBI-0071 and DOBI-0188, respectively. The settlement statement split the award between "Dwelling" and "Contents;" however, the payments were issued based upon one contract. It is unclear why it was divided into separate contracts in the Initial Decision.

in their own financial interests by doing what would be necessary in order to collect the recoverable depreciation." Ibid. The Department responded to this by stating that "it is undisputed that various depreciation amounts were not paid to the insureds at the time [the R]espondents' fee was charged. A fee cannot be charged on an 'assumption' that additional monies will be paid later." Ibid.

ALJ Gertsman stated that the record is devoid of documentary evidence that would support the Respondents' assertion, and without any support for the Respondents' claim, the Respondents are requesting that an assumption be made that every individual insured acted in what the Respondents believe to be in the insured's financial interest. Ibid. However, as it was not in dispute that the various depreciation amounts were not paid to the insureds at the time that the Respondents fee was charged, ALJ Gertsman found that the Department's calculations are correct. Ibid. Moreover, ALJ Gertsman found that in thirty-two contracts at issue in this Count, the Respondents collected fees from insureds which exceeded thirty percent of the total insurance settlement proceeds paid to the insured, in contravention to the Respondents' contracts with the insureds. Ibid.

Based upon the findings above, ALJ Gertsman stated that the Department had shown that during the period of December 2012 through July 2014, APA entered into at least thirty-seven contracts charging the insureds a thirty or twenty-five percent fee based on the full or gross settlement amount, before deductions for depreciation and deductibles were subtracted by each insured's insurance company. Id. at 11. ALJ Gertsman additionally stated that the contracts provided for an administrative fee of $250 per $1,500 to recover from the insurance company. Ibid. ALJ Gertsman found that these contractual provisions allowed APA to recover fees based on amounts that were not paid to the insureds, including for the deductible and deprecation amounts. Ibid. Accordingly, ALJ Gertsman stated that "[t]here can be no doubt that collecting

fees based upon funds not paid to the insureds is a clear violation of the language of" N.J.A.C. 11:1-37.13(b)(3)(ii), which provides that the written memorandum or contract between a licensed public adjuster and an insured shall contain a list of the services to be rendered and the maximum fee to be charged, which fees must be reasonably related to the services rendered. Ibid.

ALJ Gertsman additionally noted that the Department had demonstrated that APA's fee structure was unreasonable. Ibid. Specifically, he stated that in six instances, for clients C.L., L.W., S.G., L.H., and G.L. (two contracts), APA collected a larger monetary amount than the client received from their insurance companies. Ibid. Further, ALJ Gertsman stated that in thirty-two instances, APA collected fees that exceeded thirty percent of the total insurance settlement proceeds paid to the insured, in contravention of the Respondents' contracts with the insureds. Ibid. For client O.F., ALJ Gertsman stated that APA collected a $250 fee when the insurance company paid out some of the depreciation amount, even after collecting a twenty-five percent[34] fee based on the full or gross settlement amount. Ibid.

In light of the above, ALJ Gertsman found that APA's fee structure was in violation of N.J.A.C. 11:1-37.13(b)(3)(ii), and that because Bellamy signed all of the contracts at issue, ALJ Gertsman additionally concluded that Bellamy also violated the provisions of N.J.A.C. 11:1-37.13(b)(3)(ii). Id. at 12.

Further ALJ Gertsman found that the Respondents' actions, set forth above, demonstrate untrustworthiness in violation of N.J.S.A. 17:22B-14(a)(4), which allows the Commissioner to suspend or revoke a license if the Commissioner determines that a licensee has

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[34] While the settlement statement marked as DOBI-0202 provides that the fee collected is twenty-five percent, the Respondents' contract with O.F., marked as DOBI-0010, called for a thirty-percent fee and the amount actually collected by the Respondents on DOBI-0202 is thirty percent of the gross settlement amount.

"demonstrated…incompetency, lack of integrity, bad faith, dishonesty, financial irresponsibility, or untrustworthiness to act as an adjuster" and N.J.A.C. 11:1-37.14(a)(4), which allows the Commissioner to suspend or revoke a license upon a demonstration of the licensee's "lack of integrity, incompetency, bad faith, dishonesty, financial irresponsibility, or untrustworthiness to act as a public adjuster." Ibid. ALJ Gertsman additionally found that the Respondents are in violation of N.J.S.A. 17:22B-14(a)(1), which allows the Commissioner to suspend or revoke a license if the Commissioner determines that a licensee has violated any provision of the insurance law and rules promulgated thereunder, and N.J.A.C. 11:1-37.14(a)(1), which allows the Commissioner to suspend or revoke a license if the licensee has violated any provision of this State's insurance laws and regulations. Ibid.

Penalties Recommended by the ALJs

As to the appropriate penalty, the ALJs noted that under the Public Adjusters' Act, the Commissioner may suspend or revoke any public adjuster license if the Commissioner determines that the adjuster has violated the insurance laws or regulations of this State. PSD at 14 and Initial Decision at 12 (citing N.J.S.A. 17:22B-14). The ALJs stated that, in addition to suspending or revoking a license, the Commissioner may impose penalties of not more than $2,500 for the first offense and not more than $5,000 for each subsequent offense. PSD at 14 and Initial Decision at 12 (citing N.J.S.A. 17:22B-17). The Commissioner may also seek an order restoring to any person "moneys or property acquired by means of an unlawful act or practice." PSD at 14 and Initial Decision at 12. Both ALJs agreed that the Department had shown that the Respondents entered into contracts in violation of several sections of the Public Adjusters' Act. PSD at 14 and Initial Decision at 12. ALJ Sanders noted that the Department, in relation to Counts One through Five of the OTSC, was seeking that a penalty of $38,750 be imposed and that restitution to the insureds

of $29,597.18 be ordered. PSD at 14. ALJ Gertsman recognized that the Department, in relation to Count Six of the OTSC, was seeking that a penalty of $9,500 be imposed based on $250 for each of the thirty-eight violations established. Initial Decision at 12.

The ALJs applied the seven factors for determining monetary penalties set forth in Kimmelman v. Henkles & McCoy, Inc., 108 N.J. 123, 137-39 (1987). PSD at 14-16, Initial Decision at 12-14. These factors are: (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; and (7) past violations. PSD at 14 and Initial Decision at 12.

As to the first factor in Kimmelman, the good or bad faith of the Respondents, ALJ Sanders found that the Respondents' bad faith was evidenced by them contracting with clients prior to the time APA was licensed in this State. PSD at 14. ALJ Sanders further found that it was additionally an exercise of bad faith to solicit clients in violation of the time requirements set by the statute in an attempt to secure business at a time when the client was less likely to evaluate a situation in a calm and clear matter. Ibid. Moreover, misleading consumers as to their right to cancel the contract at any time, charging amounts not in accordance with contractual language, and using payment language that has contradictory payment terms were also found by ALJ Sanders to be actions taken by the Respondents in bad faith. Id. at 14-15.

ALJ Gertsman additionally found that the Respondents acted in bad faith by utilizing a fee structure that enabled the Respondents to recover significantly higher fees than they would have if they had based their fees on the net amounts paid to the insureds. Initial Decision at 12. ALJ Gertsman stated that this fee structure caused the Respondents, in six instances, to recover more than the insureds and in thirty-two instances, to recover a fee higher than permitted by the

contracts. Id. at 12-13. Based upon this fee structure, ALJ Gertsman stated that the Respondents' actions were not an exercise of good faith. Id. at 13.

As to the second factor in Kimmelman, the ability to pay, both ALJs noted that the Respondents have failed to offer evidence as to their ability or inability to pay a civil monetary penalty. PSD at 15 and Initial Decision at 13.

As to the third factor, the profits obtained, ALJ Sanders stated that the Department had shown that the Respondents profited $1,129.36 from fees collected in relation to Count Four of the OTSC and $26,287.36 from charging the higher amounts in the contracts involved in Count Five of the OTSC. PSD at 15. ALJ Sanders noted that although the Department did not cite a particular amount, it also urged that she consider the potential for profit in signing contracts before becoming licensed, solicitation of clients at prohibited hours, and failing to provide proper notice of cancellation procedures. Ibid.

ALJ Gertsman additionally found that the Department had shown that the Respondents improperly profited $27,516.72 between December 2012 and July 2014 in relation to Count Six of the OTSC. Initial Decision at 13.

As to the fourth factor, injury to the public, ALJ Sanders noted that the Department had demonstrated that there was a specific injury to insureds in the amount of $27,516.72, as well as a generalized harm of degrading the trust that consumers have in the business of public adjustment services for insurance claims. PSD at 15.

ALJ Gertsman stated that the Department demonstrated injury to the public through the Respondents disregard of important safeguards and protections for consumers. Initial decision at 13.

Regarding the fifth factor in Kimmelman, the duration of illegal activity, both ALJs found that the illegal activities at issue in the instant matter took place from December 2012 to January 2014, a period of roughly twenty months. PSD at 15 and Initial Decision at 13.

Regarding the sixth factor, the existence of criminal charges related to the matter, both ALJs noted that neither criminal actions nor actions concerning treble penalties exist in this matter and therefore, the only penalty contemplated derives from the present action. PSD at 15 and Initial Decision at 13. The ALJ stated that the Department pointed out that the New Jersey Supreme Court in Kimmelman, 108 N.J. at 128, stated that a lack of criminal punishment weighs in favor of a larger civil penalty. PSD at 15 and Initial Decision at 13.

For the final factor in Kimmelman, previous relevant regulatory and statutory violations, the ALJs noted that there was no evidence of the Respondents having ever been the subject of a regulatory action. PSD at 15 and Initial Decision at 13.

Based upon these factors, ALJ Sanders recommended the following civil monetary penalties: $5,000 for five separate instances of entering into contracts prior to licensure, as set forth in Count One of the OTSC; $8,000 for the eight violations found in relation to Count Two of the OTSC; and $12,500 for the fifty contracts that lacked the required language, information, or a signature in relation to Count Three of the OTSC. However, ALJ Sanders noted that "as no evidence linked Bellamy to the unsigned contract, she is not liable for one of the fifty violations." Initial Decision at 16. ALJ Sanders also recommended a penalty of $2,000 for the Respondents overcharging insureds on the two contracts that were proven in Count Four of the OTSC; and $8,750 related to thirty-five contracts containing confusing and misleading contractual language

regarding payments in Count Five of the OTSC.[35] PSD at 15-16. The ALJ stated that all of the recommended fines are jointly and severally liable by the Respondents, except for a fine of $250 in relation to the unsigned contract in Count Three of the OTSC, for which APA is solely liable. Id. at 16.

ALJ Sanders also noted that the Department sought restitution in the amount of $2,517.64 for Count Four of the OTSC and $27,079.54 for Count Five of the OTSC. Ibid. Based on the findings of fact, ALJ Sanders recommended that restitution totaling $1,129.36 for Count Four of the OTSC and $26,387.36 for Count Five of the OTSC be issued. Ibid.

Additionally, based upon the above Kimmelman factors, ALJ Gertsman recommended that the following civil monetary penalty be imposed against the Respondents: $250 for each of the thirty-eight violations found in Count Six of the OTSC, for a total of $9,500. Initial Decision at 13. ALJ Gertsman also recommended that costs of investigation, in the amount of $275, be imposed against the Respondents. Id. at 13-14. ALJ Gertsman further recommended that the Respondents be jointly and severally liable for the above amounts "because they acted in concert." Id. at 14.

ALJ Gertsman additionally recognized that the Department sought revocation of the Respondents' public adjuster licenses for the violations found in the PSD and Initial Decision.

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[35] ALJ Sanders originally stated that she was recommending a civil monetary penalty of $8,750 for thirty-five violations found in Count Five of the OTSC. PSD at 16. Specifically, ALJ Sanders stated "[o]n Count Five, the charge related to confusing and misleading contract language regarding payment, [the Department] seeks $9,250 for thirty-seven violations. As noted above, the Department did not prove two of them, and therefore the penalty should be $8,750." Ibid. As noted in footnotes 3, 14, and 15 above, ALJ Sanders did not make any findings regarding the contract marked as DOBI-0068, which should have been included in the larger set of contradictory contracts set forth on page 7 of the PSD. However, ALJ Sanders ultimately recommended $9,000 in relation to Count Five of the OTSC in her "ORDER" section of the PSD. PSD at 16. This would account for $250 for each of thirty-six violations for Count Five of the OTSC.

Ibid. He noted that N.J.S.A. 17B:22-14(a) provides that the Commissioner may revoke a public adjuster license if the licensee:

> (1) Has violated any provision of the insurance law, including any rules promulgated by the [C]ommissioner, or has violated any law in the course of his, or its, dealings as an adjuster;
>
> (2) Has withheld material information or made a material misstatement in the application for a licensee;
>
> (3) Has committed a fraudulent or dishonest act;
>
> (4) Has demonstrated his, or its, incompetency, lack of integrity, bad faith, dishonesty, financial irresponsibility or untrustworthiness to act as an adjuster; or
>
> (5) Has aided, abetted or assisted another person in violating any insurance law of this State.

Ibid.

ALJ Gertsman stated that the record for Count Six of the OTSC demonstrates that the Respondents violated the provisions of N.J.A.C. 11:1-37.13(b)(3)(ii) by establishing a fee structure that was not reasonably related to the services that were rendered. Ibid. Additionally, the Respondents demonstrated untrustworthiness in violation of N.J.S.A. 17:22B-14(a)(4) and N.J.A.C. 11:1-37.14(a)(4). Ibid. ALJ Gertsman stated that the Respondents are therefore in violation of N.J.S.A. 17:22B-14(a)(1) and N.J.A.C. 11:1-37.14(a)(1) for violating any provision of the State's insurance law. Ibid.

ALJ Gertsman additionally restated the findings that ALJ Sanders made in the PSD. Ibid. Specifically, he noted that:

- In Count One of the OTSC, the Respondents were found to be in violation of N.J.S.A. 17:22B-3(a) and N.J.S.A. 17:22B-3(b);
- In Count Two of the OTSC, the Respondents were found to be in violation of N.J.S.A. 17:22B-13(b), N.J.A.C. 11:1-37.13(d), and N.J.S.A. 17:22B-14(a)(4);

- In Count Three of the OTSC, the Respondents were found to be in violation of N.J.A.C. 11:1-37.13(b)(5), N.J.A.C. 11:1-37.13(b)(3)(iii), and N.J.A.C. 11:1-37.13(b)(3)(i);

- In Count Four of the OTSC, the Respondents were found to be in violation of N.J.S.A. 17:22B-14(a)(4), N.J.A.C. 11:1-37.14(a)(4), and N.J.A.C. 11:1-37.17,[36] demonstrating incompetency, financial irresponsibility, and untrustworthiness;[37] and

- In Count Five of the OTSC, the Respondents were found to be in violation of N.J.S.A. 17:22B-13(c), N.J.A.C. 11:1-37.13(b)(4), N.J.S.A. 17:22B-14(a)(4), and N.J.A.C. 11:1-37.14(a)(4), where the acts on the part of the Respondents demonstrated untrustworthiness.[38]

Id. at 14-15.

ALJ Gertsman stated that it has been found that the Respondents have engaged in unlicensed activity, entered into contracts before the passage of twenty-hours following the claimed loss, failed to include required language in contracts, and collected unreasonable fees. Id. at 15. Therefore, he concluded that the Respondents are in violation of N.J.S.A. 17:22B-14(a)(1) and (4), and the Department had demonstrated that the revocation of the Respondents' public adjuster licenses is warranted. Ibid. Lastly, and based upon the above, ALJ Gertsman noted that the Department's motion for summary decision for Count Six of the OTSC was granted and the Respondents' motion for summary decision for Count Six of the OTSC was denied. Ibid.

EXCEPTIONS

By letter dated March 11, 2020, the Office of the Attorney General, on behalf of the Department, submitted Exceptions to the Initial Decision pursuant to N.J.A.C. 1:1-18.4(a).

[36] As noted above, N.J.A.C 11:1-37.17 relates to public records and was not alleged as a violation in the OTSC in this matter.

[37] ALJ Sanders additionally found that the Respondents violated N.J.A.C. 11:1-37.14(a)(8), which was not set forth in the OTSC, as noted above. See PSD at 13.

[38] ALJ Sanders additionally found that the Respondents violated N.J.A.C. 11:1-37.13(a). See PSD at 13.

("Department Exceptions"). After several extensions of time, the Respondents filed untimely Exceptions to the Initial Decision on October 9, 2020 pursuant to N.J.A.C. 1:1-18.4(a). ("Respondent Exceptions"). Although the Respondents' Exceptions were untimely, the parties were notified by letter dated October 16, 2020 that the Exceptions filed would be reviewed in this Final Decision and Order. Additionally, the parties were advised in the October 16, 2020 letter that the Department's Reply to the Respondent's Exceptions would be due on November 16, 2020, pursuant to the previous extension requests.

Department's March 11, 2020 Exceptions

In its Exceptions, the Department concurred with the overall conclusions contained in the PSD and Initial Decision in this matter, with two exceptions. Specifically, the Department disagreed with the two reductions to the requested restitution amounts, as made by ALJ Sanders in the PSD. Department Exceptions at 1. The Department stated that the documentation submitted with the Department's first motion for summary decision was sufficient to support the requested restitution amounts. Id. at 1-2. The Department stated the requested restitution amounts should not have been reduced. Id. at 2.

Respondents' October 9, 2020 Exceptions

In their Exceptions to the PSD and Initial Decision, the Respondents summarized the allegations contained in the OTSC and the findings made by both ALJ Sanders and ALJ Gertsman in this matter. The Respondents made the following Exceptions related to each Count of the OTSC:

Count One:

The Respondents asserted that no rule exists that provides that a public adjuster cannot use business organizations to conduct business. Respondent Exceptions at 3. The Respondents

additionally stated that Bellamy was the licensed public adjuster who was responsible for work being done. Ibid. The Respondents contended that "[t]his was an instance where no one was harmed and no insured complained or cared." Ibid. The Respondents argued that there is no legal justification for the finding that APA was acting as a public adjuster when Bellamy, not APA, was acting on behalf of an insured. Ibid. Moreover, the Respondents argued that the Bellamy's use of APA as a "vehicle for her profession" does not require that APA be licensed because, as the Respondents contended, "a license issued only to a business entity would not be acceptable." Ibid. The Respondents argued that the PSD and Initial Decision "ignore . . . the reality of the situation and fail . . . to explain how a fictionally created entity was acting as a public adjuster when it was always . . . Bellamy who was doing the adjusting." Ibid. The Respondents stated that if the State wishes that there be a requirement that a public adjuster who is practicing within a corporation or limited liability company must have their entity licensed, then the State should adopt such a rule." Ibid.

Lastly, as it relates to Count One of the OTSC, the Respondents stated that the provision set forth in N.J.S.A. 17:22B-17,[39] which provides that "[a]ny action alleging the unlicensed practice of public adjusting shall be brought pursuant to this section in the Superior Court" was ignored. Ibid. The Respondents argued that the legislative directive only allows for the Superior Court to hear matters involving unlicensed practice of public adjusting. Ibid.

[39] The Respondents cite to "N.J.S.A. 17B-22B-17" for this proposition; however, the correct statutory citation for the provision referenced is "N.J.S.A. 17:22B-17."

Count Two:

The Respondents acknowledged that eight contracts were entered into between 6:00 p.m. and 8:00 a.m. during the twenty-four hours following a loss. Ibid. The Respondents stated that this was due to "a lack of experience and insistent clients." Ibid.

Count Three (cancellation provision issues):

The Respondents stated that the violations found in this Count are premised on the notion that a public adjuster contract can be cancelled by the insured at any time. Ibid. However, the Respondents argued that there is nothing in the Public Adjusters' Act or its accompanying regulations that allow for this premise. Ibid. The Respondents quoted N.J.A.C. 11:1-37.13(b)(5), which states that a contract between a public adjuster and an insured must contain: "(i) [t]he signatures of the insured and the public adjuster; (ii) [a] list of services to be rendered and the maximum fees to be charged, which fees shall be reasonably related to services rendered; and (iii) [t]he time and date of execution of the contract (day, month, year) by each party.[]" The Respondents argued that the contractual language at issue in this matter "comports with the regulation as the only time the contract can be cancelled is if that cancellation is made in writing within three days of the contract being signed and the contract spells out each parties' responsibilities in the event of cancellation." Id. at 3-4. The Respondents additionally contended that if the Department's position is that contract for public adjuster services can be cancelled at any time "there are serious problems." Id. at 4.

(a) Respondents' due process arguments in relation to Count Three of the OTSC

The Respondents argued that there is nothing in the Public Adjusters' Act or accompanying regulations that would allow for or mandate a requirement that a client could cancel a contract for public adjuster services unilaterally at any time. Ibid. Moreover, the Respondents asserted that

there was no notice of this "extraordinary grant of power." Ibid. The Respondents opined that the only explanation for this "is that these administrative regulations are designed to address other laws which may require a cancellation provision." Ibid. The Respondents noted that "there are other laws which arguably do require a public adjuster contract to contain mandatory cancellation provisions [such as] the Federal Trade Commission Act, 15 USCA 41 et seq.[, which] requires a three-day cancellation right in door-to-door sales contract[s]." Ibid.

The Respondents argued that the courts have dealt with due process in the regulatory process, and the New Jersey Supreme Court has stated that "due process means that administrators must do what they can to structure and confine their discretionary powers through safeguards, standards, principles and rules." Id. at 4-5 (citing Crema v. New Jersey Dep't of Environmental Protection, 94 N.J. 286, 301 (1983) (citations omitted). The Respondents additionally quote the New Jersey Supreme Court in New Jersey Soc. For Prevention of Cruelty to Animals v. Dep't of Agriculture, 196 N.J. 366, 386 (2008), which provided that "[e]ven if a regulation falls within the scope of the agency's legislative authority, it will nonetheless be invalidated if the agency 'significant[ly]' fails 'to provide . . . regulatory standards that would inform the public and guide the agency in discharging its authorized function.'" Id. at 5 (quoting New Jersey Soc. For Prevention of Cruelty to Animals, 196 N.J. at 386 (citations omitted)).

The Respondents provided that the Superior Court of New Jersey, Appellate Division, noted that it is well settled that a rule that does not contain a clear or objectively ascertainable standard may not be upheld. Id. at 5 (citing In re N.J.A.C. 7:1B-1.1 Et Seq., 431 N.J. Super. 100, 128 (App. Div. 2013) (citations omitted)). The Respondents pointed out that the court stated that "[a] regulation will be invalidated if it fails 'to provide . . . regulatory standards that would inform the public and guide the agency in discharging its authorized function.'" quoting In re N.J.A.C.

7:1B-1.1 Et Seq., 431 N.J. Super. at 129 (citations omitted)). The court additionally provided that its "role . . . is 'to assure that agency rulemaking conforms with basic tenets of due process, and provides standards to guide both the regulator and the regulated." Ibid.

The Respondents contended that the statute and rule that the Respondents are accused of violating "says nothing about giving a client the right to unilaterally cancel a contract." Id. at 5. Therefore, the Respondents argue that if the statute and regulation do not provide for this requirement, "then how can the public or regulated [entity] expect to know anything about such a requirement." Ibid.

(b) Respondents' ultra vires arguments in relation to Count Three of the OTSC

The Respondents argued that administrative regulations and administrative actions "cannot subvert or enlarge upon statutory policy." Ibid. The Respondents referenced In the Matter of the Freshwater Wetland Protection Act Rules, N.J.A.C. 7:7A-1.1 et seq., 238 N.J. Super 516 (App. Div. 1989) where the court struck down a New Jersey Department of Environmental Protection ("DEP") regulation that imposed a five-year limitation on a statutorily granted exemption. Ibid. The Respondents stated that since the statute at issue in the above-referenced matter did not impose a time limit, the limit imposed under the regulation was invalid despite the DEP's argument that the Legislature delegated authority to DEP to deal with the problem. Ibid. The Respondents argued that the court concluded that if the Legislature wished to impose a time limit on exemptions, it would have specifically done so rather than leave such a decision to the regulatory authority because the exemption "was not the kind of incidental regulatory power a [c]ourt must imply as necessary to effectuate the Legislature['s] intent." Ibid.

The Respondents contended that the Department is attempting to impose a right to cancel a contract in a statute that does not include a provision about canceling a contract. Ibid. The

Respondents argued that the cancellation of a contract would be "one of those things that one would expect the Legislature to address if that were in fact its intention." Ibid. Additionally, the Respondents stated that in the present matter, parties have entered into a contract and the Department "has decided to grant one of those parties the unilateral power to terminate the contract." Id. at 6. The Respondents asserted that this directive by the Department violates "Article 1, Section 10, of the Unites States Constitution which provides 'no State shall . . . pass any . . . law impairing the obligation of contracts. . . .'" Ibid.

The Respondents stated that the Public Adjusters' Act does not contain a statement of legislative intent "or any other sort of policy declaration." Ibid. The Respondents asserted that the "obvious intent" of the Public Adjusters' Act was "to define what a public adjuster is and does." Ibid. The Respondents noted that the Public Adjusters' Act, in addition to setting forth the process to obtain a license, includes prohibited behavior and discipline of licensees who engage in that behavior as well as granting authority to the Commissioner to effectuate the purpose of the Act. Ibid. The Respondents argued that the Public Adjusters' Act does not provide, and the Legislature did not intend, that an insured has the power to cancel a contract whenever the insured chooses. Ibid. The Respondents stated any administrative rule that sets forth such a proposition would be ultra vires. Ibid.

(c) Respondents' rulemaking arguments in relation to Count Three of the OTSC

The Respondents alleged that the Department is attempting to establish regulations through litigation. Ibid. The Respondents provided that although "[t]here is no clear [non]ambiguous statement in the statute or the administrative regulations tha[t] a public adjust[er] contract must contain a provision that the client can unilaterally cancel a contract," the Department is seeking "to impose that requirement by asking this [c]ourt to impose such a rule." Ibid.

The Respondents stated that in State of New Jersey, Dep't of Environmental Protection v. Stavola, 103, N.J. 425 (1986), the New Jersey Supreme Court held that an adoption by the rulemaking process is warranted if the agency determination involves many or most of the following:

> (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy."

Id. at 6 (quoting State of New Jersey, Dep't of Environmental Protection v. Stavola, 103, N.J. at 437 (quoting Metromedia Inc. v. Director, Div. of Taxation, 97 N.J. 313, 331-32 (1984))). The Respondents asserted that all the above-referenced factors exist in the present matter, and the issues presented in this matter would be the Department's position involving any other case that involves the same issue, or "there would be substantial equal protection issues." Id. at 6-7. The Respondents additionally argued that the Department's position is one that will be followed in the future and is not otherwise expressly provided for or officially set forth. Id. at 7. The Respondents contended that there is nothing in the Public Adjusters' Act that expressly provides for a requirement that contracts for public adjuster services must give the client the unilateral right to cancel the contract and "[t]o require a public adjuster to do so is a very big deal and for the Department do it in this manner is unacceptable." Ibid.

Count Three (Time stamp issue):

The Respondents admitted that there were seven contracts that did not contain the date of execution. Ibid. The Respondents attributed this to and oversight from lack of experience. Ibid.

Count Three (unsigned contract issue):

The Respondents admitted that there does appear to be one contract where the public adjuster did not sign the contract. Ibid. The Respondents contended that the lack of signature appears to be an oversight. Ibid.

Count Four:

The Respondents admitted that they took a commission fee on the gross settlement amount before the subtraction of deductibles and depreciation. Ibid. However, the Respondents contended that no statute exists that deals with public adjuster fees, and that the only administrative regulation that exists states that the fee charges must be related to the services rendered. Ibid. The Respondents argued that "reasonably" and "services" is not defined, and there is nothing in the regulation that prohibits a public adjuster from taking a commission on the gross settlement amount before subtracting for deductibles or depreciation. Ibid. The Respondents asserted that if the Department wants this to be a regulation, it should adopt it as such. Ibid.

Count Five:

The Respondents argued that the contractual language in their contracts with insureds satisfies the requirements set forth in N.J.S.A. 56:12-2 in that the language contained in their contracts is "written in a simple, clear, understandable and easily readable way." Ibid. The Respondents stated that "[t]he language in the clauses referring to the 30% fee of the total insurance settlement proceeds, fees for supplemental claims, and deductions for commissions are not contradictory." Ibid. The Respondents assert that "the Court's obligation when interpreting

contractual provisions is clear. First and foremost, ‘fundamental canons of contract construction require that we examine the plain language of the contract and the parties’ intent, as evidenced by the contract's purpose and surrounding circumstances.’” Ibid. (quoting Highland Lakes Country Club & Community Ass’n v. Franzino, 186 N.J. 99, 115 (2006) (citations omitted)). The Respondents contended that the intent of the parties is set forth in the first sentence of the contracts at issue in this matter, which states “You agree and promise to pay ‘APA’ a fee for the services it provides for you.” Id. at 8. The Respondents argued that the contracts are written in plain language and provides additional information throughout the contract for the client to fully understand what they are agreeing to in the contract. Ibid.

The Respondents stated that the first paragraph of the contracts, which deals with a thirty percent fee, refers to the net proceeds received by the insurer. Ibid. The Respondents additionally alleged that most public adjusters charge a percentage of the settlement because “public adjusters exist to advocate for, and increase, an insured’s settlement amount in a covered claim and leave their clients with a net financial improvement after fees are paid.” Ibid. The Respondents asserted that the second paragraph, which deals with commissions deducted from the full settlement amount, refers to the gross settlement or “negotiated award” before deductions are taken. Ibid. The Respondents contended that there is nothing contradictory regarding the statements made in two paragraphs and that the commission is solely an administrative fee for public adjusters to recoup recoverables for their clients. Ibid. The Respondents stated that their clients are made aware of the administrative fee in the contract where it states, “Advocate charges a $250 per $1,500 Administrative fee to recoup Recoverables from the insurance company.” Ibid. The Respondents contended that it is challenging to recoup recoverables when an insurer is unwilling to pay, and a

public adjuster should be paid for their time and effort in collecting said recoverables for the client. Ibid.

The Respondents argued that even if it is determined that the contracts are contradictory, "the several parts of a contract should be so construed as to avoid conflict." Ibid. (quoting Silverstein v. Dohoney, 32 N.J. Super. 357, 364 (1954)). The Respondents stated that any interpretation of the contracts at issue would come to the conclusion that the client was in agreement to pay the Respondents for their services in the amount of their "30% fee of the net proceeds, any extraordinary expenses beyond what occurs in the formal cost of business, a 50% fee for a supplemental award, and an administrative fee in the form of a commission deducted from the gross proceeds, a power of attorney, and any right to cancel." Ibid. The Respondents asserted that they complied with New Jersey statutes by preparing the contracts and in good faith to comply with the Public Adjusters' Act by having plain language in the contract that explained information to the client. Ibid.

Count Six:

The Respondents argued that the allegations contained in Count Six of the OTSC were based in large part that the insured did not receive the depreciation amounts. Ibid. However, the Respondents contended that there was no proof to show that the depreciation amount were not received by the insureds. Ibid. The Respondents stated that their dispute with the allegations in this Count mirror the disputes set forth under Count Five above. Ibid.

Department's November 16, 2020 Reply

The Department filed a Reply to the Respondents' Exceptions pursuant to N.J.A.C. 1:1-18.4(d). ("Department Reply").

Count One:

The Department argued that the Respondent's arguments against the findings of liability on Count One of the OTSC lack merit. Department Reply at 2. Specifically, the Department stated that the Respondents' claim that "[t]here is no rule or statute that provides that a public adjuster cannot use [a] business organization to conduct business" misconstrues the allegations. Ibid. The Department stated that the allegation contained in Count One of the OTSC is that the Respondents transacted business using a business organization that was not licensed as a public adjuster. Ibid. The Department stated that the Public Adjusters' Act at N.J.S.A. 17:22B-3(a) requires that a business entity be licensed in order to act as an adjuster. Ibid. The Department contended that the Respondents violated this provision by entering into public adjuster contracts with insureds when it was not licensed as a public adjuster. Ibid. The Department stated that, as found by the ALJs, the Respondents' violation of this provision was not cured by Bellamy executing the contracts on behalf of APA since APA, as the entity that was party to the contract, is required to be licensed as a public adjuster. Ibid.

The Department additionally pointed out that the Respondents claims that Bellamy was the licensed public adjuster who was responsible for the work and that there was no legal justification for the finding that APA was acting as a public adjuster are a misrepresentation of the facts. Id. at 3. The Department Stated that APA was explicitly named as a party to the contracts. Ibid. Moreover, the contracts not only had APA's name in large letters at the top of the contract but also explicitly stated, "This is a Public Adjuster Contract that is a legally binding between you and 'ADVOCATE PUBLIC ADJUSTERS' herein after 'APA.' By signing below you are retaining 'APA' to assist you in the adjustment of an insurance claim against your insurance company. . . ."

Ibid. The Department contended that by the terms of its own contract, APA was unequivocally retained as an adjuster and needed to be licensed pursuant to N.J.S.A. 17:22B-3(a). Ibid.

Additionally, the Department stated that the Respondents' claims that no one was harmed and no insured complained or cared about APA's licensure status are irrelevant because there is nothing in the law that requires a showing of consumer harm or complaint in order to sustain the violation. Id. at 3-4. The Department argued that the purpose of the law is to protect the consumers, regardless of whether any consumer complained. Id. at 4.

The Department further opposed the Respondents' contention that the violation alleged had to be brought before the Superior Court. Ibid. The Department argued that the OAL had jurisdiction in this matter because the entire controversy doctrine requires that the Commissioner bring all allegations of violations against the Respondents in a single proceeding. Ibid. Specifically, the Department provided that the entire controversy doctrine provides that the non-joinder of claims or parties is required. Ibid. (citing DiTrolio v. Antiles, 142 N.J. 253, 266 (1995) (citations omitted)). The Department stated that the principle behind this policy is that the adjudication of a legal controversy should occur in one litigation in only one court. Id. at 4 (citing Ditrolio v. Antiles, 142 N.J. at 267 (citations omitted.)). The Department stated the "central consideration is whether the claims against the different parties arise from related facts of the same transaction or series of transactions." Ibid. The test to determine whether claims are so related to be brought in a single action is whether the

> parties or persons will, after final judgment is entered, be likely to have engaged in additional litigation to conclusively dispose of their respective bundles of rights and liabilities that derive from a single transaction or related series of transactions, the omitted components of this dispute must be regarded as constituting an element of one mandatory unit of litigation.

Id. at 4-5 (citing Ditrolio, 142 N.J. at 267 (citations omitted.)).

The Department argued that in the present matter, the Respondents were alleged to have acted in concert to violate the law and therefore, the claims must be determined in one proceeding under the doctrines of entire controversy, res judicata, and collateral estoppel. Id. at 5 (citing City of Hackensack v. Winner, 82 N.J. 1, 44 (1980)). The Department stated that separate claims should not be held in abeyance if the issue is part of the "overall dispute between the parties, in order to lay at rest all their legal differences in one proceeding and avoid the prolongation and fractionalization of litigation." Id. at 5 (quoting Tevis v. Tevis, 79 N.J. 422, 434 (1979)). Moreover, the Department stated that the New Jersey Supreme Court has acknowledged that the entire controversy doctrine was necessary "not only to resolve the controversy between the parties but also to avoid the collision between two tribunals." Id. at 5 (quoting City of Hackensack, 82 N.J. at 33). The Department further specified that the consideration is whether the common issue can be "fairly, competently and fully tried and adjudicated together with and as a constituent part of all other issues in the case before one agency so that fragmented and repetitious actions would be avoided, all relevant concerns addressed and the entire controversy concluded in a single proceeding." Ibid.

The Department contended that the OTSC in this matter was the result of one investigation by the Department and involves the same general and factual nexus, which is the Respondents' contracts from 2012 through 2014. Id. at 6. The Department stated that there is no dispute that Bellamy was APA's sole owner and that the business entity and the individual acted in concert. Ibid. The Department asserted that the allegations in Count One of the OTSC were properly transmitted to the OAL under the entire controversy doctrine, and the OAL is the proper venue for the adjudication of the Department's allegation that the Respondents entered into public adjuster contracts with New Jersey insureds when APA was not licensed. Ibid.

Count Two:

The Department acknowledges that the Respondents admit that eight contracts were entered into between 6:00 p.m. and 8:00 a.m. during the twenty-four hours following a loss, and this conduct violates N.J.S.A. 17:22B-13(b), N.J.S.A. 17:22B-14(a)(1) and (4), and N.J.A.C. 11:1-37.13(d). Ibid.

Count Three:

As it relates to the cancellation provision allegations, the Department stated that ALJ Sanders found that the Respondents entered into forty-two contracts that failed to properly provide cancellation language and related information that would apply after three days from the date of the contract. Id. at 7. The Department stated that while the Respondents made three arguments related to this allegation that are titled (1) due process; (2) ultra vires; and (3) rulemaking, all three arguments essentially assert that the Public Adjusters' Act does not provide the authority to require public adjusters to allow their clients to cancel contracts at any time, and the regulations at issue do not clearly require public adjusters to allow their clients to cancel contracts at any time. Ibid. The Department asserted that these arguments are without merit. Ibid.

Count Three (cancellation provision issues):

First, the Department argued that the Legislature authorized the Department to "promulgate any rules and regulations as may be necessary to effectuate the purposes of [the Public Adjusters' Act] pursuant to the 'Administrative Procedures Act.'" Ibid. (quoting N.J.S.A. 17:22B-20). The Department contended that the clear purpose of the Public Adjusters' Act was to protect consumers from various types of unfair practices by public adjusters. Id. at 7-8 (citing the requirements set forth in N.J.S.A. 17:22B-3 (licensing requirement); and N.J.S.A. 17:22B-12 (bonding requirement); N.J.S.A. 17:22B-13 (prohibited practices)).

Secondly, the Department asserted that New Jersey courts disfavor a finding that "an agency acted in an ultra vires fashion in adopting regulations." Id. at 8 (quoting N.J. Coalition of Health Care Professionals, Inc. v. N.J. Dep't of Banking and Ins., Div. of Insurance, 323 N.J. Super. 207, 229 (App. Div.), certif. denied, 162 N.J. 485 (1999). The Department stated that courts give great weight to the expertise and judgment of agency heads, especially in the insurance field. Id. at 8 (citing N.J. Coalition of Health Care Professions, Inc., 323 N.J. Super. at 229; Capital Health Sys. v. N.J. Dep't. of Banking and Ins., 445 N.J. Super. 522, 528 (App. Div.), certif. denied, 227 N.J. 281 (2016).

The Department contended that the Respondents' citations are inapplicable to the present matter. Id. at 8. Specifically, the Department stated that while the Respondents cited to Crema, 94 N.J. at 286, to support their argument that there must be substantive and procedural standards to control agency discretion, "Crema concerned a conceptual review and approval of a proposed construction project, not regulations" and the Respondents failed to explain how Crema applies to this matter. Id. at 8.

Additionally, the Department stated that it is erroneous for the Respondents to contend that insureds have no right to cancel a service contract at any time because it violates the basic concept of the law of agency. Id. at 9. The Department argued that since the public adjuster is the agent of the insured, the insured does and should have the right to cancel the contract unilaterally at any time. Ibid. If the insured does cancel the contract, the public adjuster would then be entitled to quantum meruit payment for the actual efforts expended and not the full payment under the contact. Ibid.

The Department provided that agency contracts are not specifically enforceable in a suit brought by the agent against his principal. Ibid. (citing Sarokhan v. Fair Lawn Memorial Hospital,

83 N.J. Super. 127, 133 (App. Div. 1964)). The Department stated that courts are reluctant to force a principal to keep an agent against his will "because the law has allowed every principal a power to revoke his deputation at anytime." Ibid. Therefore, "[t]he mere fact that the appointment recites that it will be irrevocable during the term of the appointment does not preclude the principal from exercising the power to revoke it." Ibid. "[I]t is not necessary for the principal to have any good reasons for his actions in revoking the agency, and he may cancel the agent's authority at his caprice, even though the instrument creating the agency contains an express declaration of irrevocability." Ibid. The Department contended that in light of the above, the requirement set forth in N.J.A.C. 11:1-37.13(b)(5) that public adjuster contracts allow cancellation at any time complies with the Public Adjusters' Act and case law. Id. at 10.

Lastly, the Department stated that the regulations are sufficiently clear in what is required. Ibid. The Department stated that pursuant to N.J.A.C. 11:1-37.13(b)(5)(i), the contract between the public adjuster and the insured "shall prominently include a section which specifies . . . [t]he procedure to be followed by the insured if he or she seeks to cancel the contract, including any requirement for a written notice." Ibid. Further, the same regulation states that the public adjuster's right to compensation must be "based upon a written memorandum, signed by the party to be charged and by the adjuster, and specifying or clearly defining the services to be rendered and the amount or extend of the compensation." Ibid. Moreover, the Department pointed out that the in response to a comment in the notice of adoption for N.J.A.C. 11:1-37.13(b)(5)(i) the Department specifically stated that an individual was entitled to cancel the contract at any time. Id. at 11. The rule adoption stated:

> The Department recognizes an individual's right to cancel any contract which he or she has entered into, and also recognizes that an individual may retain certain obligations upon such cancellation [therefore] a public adjuster contact shall include a section which

> specifically details an individual's obligation under the contract if he or she chooses to cancel the contract at any time.

Ibid. (quoting 26 N.J.R. 1715 (April 18, 1994)).

Therefore, the Department contended that the plain language of the regulations and the supporting explanation contained in the rule adoption is clear. Id. at 11. The Department stated that the inclusion of the phrases "procedures to be followed by the insured if he or she seeks to cancel the contract" and "at any time" in N.J.A.C. 11:1-37.13(b)(5)(i) and (ii), sufficiently make it clear that public adjuster must allow for cancellation by the insured at any time. Ibid. The Department asserted that the Respondents' failure to provide the cancellation language past three days not only violates the regulations by not providing the required information that would inform the insured's decision to cancel, but also improperly suggests that the insureds may only cancel a contract within three days after the contract is executed. Ibid.

Count Three (time stamp issue):

The Department acknowledged that the Respondents admitted that seven contracts lacked the time of their execution and such conduct is a violation of N.J.A.C. 11:1-37.13(b)(3)(iii). Id. at 12.

Count Three (unsigned contract issue):

The Department acknowledged that the Respondents admitted that they failed to sign one contract, and therefore, such conduct is a violation of N.J.A.C. 11:1-37.13(b)(3)(i). Ibid. However, the Department argued that the ALJ incorrectly did not make the penalty for this violation joint and several. Ibid. The Department argued that under N.J.A.C. 11:1-12.2(a), active officers shall be held responsible for all insurance related conduct of the corporate licensee. Ibid. As Bellamy was APA's sole owner and the Respondents failed to introduce any evidence that APA

had any other officer or employee, Bellamy is responsible for this violation as well and the penalty should be joint and several with APA. Ibid.

Count Four:

As to this Count, the Department argued that the Respondents' Exceptions do not respond to the substance of the allegations contained in Count Four of the OTSC and ALJ Sanders incorrectly found that the Department failed to prove a violation as to one of the three contracts at issue. Id. at 13.

(a) The Substance of Count Four:

The Department stated that this Count alleged that the Respondents collected a fee from their clients in a manner that conflicts with the Respondents' own contracts. Ibid. The Department argued that by applying a fee that was contrary to the executed contracts, the Respondents committed multiple violations of the Public Adjusters' Act and accompanying regulations. Ibid.

The Department stated that for the contracts in question, the Respondents were using an earlier version of the contracts, prior to the contracts at issue in both Counts Five and Six of the OTSC. Ibid. This earlier version of the contracts stated that the fee that the Respondents charged was based on a percentage "of the total insurance settlement proceeds paid" by the insurance company. Ibid. However, the Department stated that for three clients, the Respondents applied the percentage to be charged on the larger, gross award from the insurance company that included deductible or depreciation amounts that were not paid to the insured. Id. at 13-14. The Department argued that charging a percentage of these fees that were not paid by the insurance company is in direct contravention of the Respondents' own contracts and were violations of N.J.S.A. 17:22B-13(c) and N.J.A.C. 11:1-37.13(a), N.J.S.A. 17:22B-14(a)(1) and N.J.A.C. 11:1-37.14(a)(1),

N.J.S.A. 17:22B-14(a)(4) and N.J.A.C. 11:1-37.14(a)(4), and N.J.A.C. 11:1-27.14(a)(17). Id. at 14.

The Department stated that ALJ Sanders found that there was a violation for two of the three contracts and ordered restitution pursuant to N.J.S.A. 17:22B-17. Ibid. While the Respondents discussed that the "fee shall be reasonably related to the services rendered" issue in their Exceptions for this Count, that issue is the substance of Count Six, rather than Count Four of the OTSC. Id. at 15. The Department stated that the Respondents admitted that they charged the insureds on the gross award, which includes amounts that were not paid by the insurance company. Ibid. Even though the Respondents argue that there is nothing that prohibits them from charging the fee on the gross award, the Respondents' own contracts specifically state that the fee to be charged will be based on the net amount, which is the amount actually paid by the insurance company. Ibid.

(b) The O.F. Contract and Fee:

The Department stated that, as pointed out in the Department's initial Exceptions to the PSD and Initial Decision, the ALJ erred by not finding liability and recommending restitution and a penalty in relation to the O.F. contract and fee. Ibid. The Department stated that ALJ Sanders reasoned that there were two fee statements for O.F. and a contract underlying the fee charged on the gross award to O.F. was missing. Ibid. The Department stated that the basis for that reasoning was that the sole contract provided by the Department for O.F. stated that the loss was for a "wind driven rain" claim, but the fee statement showing the gross fee award was charged on the gross award listed the claim as "windstorm." Id. at 16. ALJ Sanders surmised that because there was also a fee statement for O.F. for a "wind driven rain" claim, which was for a supplemental claim, there must have been an additional contract that was not provided. Ibid.

However, the Department argued that ALJ Sanders erred because O.F.'s fee statements are for the same loss, despite the different stated reasons for the loss. Ibid. Specifically, the Department stated that both fee statements give the date of loss as October 29, 2012. Ibid. Moreover, the Department argued that because the second fee statement dated November 21, 2012 is recoverable for depreciation only, there is only one loss, based on one contract, with a main settlement statement and a supplemental settlement statement for recoverable depreciation, which was paid at a later time. Ibid. The Department additionally noted that the Respondents did not oppose or provide any discussion or defense concerning O.F.'s contract, either in response to the initial summary judgment motion or in their Exceptions. Ibid. Accordingly, the Department requested that the Commissioner modify the PSD to (a) find a violation under Count Four of the OTSC, relating the O.F. contract and fee statement; (b) order restitution to O.F. for the $1,388.28 difference in fees as charged on the gross award versus what should have been charged on the net award. Id. at 17.

Count Five:

The Department stated that at some point after the contracts at issue in Count Four of the OTSC were executed, the Respondents began using an alternate contract form, which was internally inconsistent. Ibid. The Department stated that the form retained the same language from the previous contracts that stated that the Respondents' fee was applied to the amount "paid" by the insurance company, but the newly added language stated that the fee was applied "before deductions." Ibid. The Department further argued that the Respondents chose the "more favorable of these two contradictory statements" and then calculated their fee based on the gross award, in order to get a higher fee. Ibid. The Department stated that ALJ Sanders found the contracts to be

internally contradictory in violation of the Public Adjusters' Act and accompanying regulations, and ordered restitution and penalties for all but one of the contracts. Id. at 17-18.

The Department set forth two points in reply to the Respondents' Exceptions: (a) the Respondents cite two inapplicable cases and then admit to the violation and (b) the ALJ incorrectly lowered the penalty and restitution amounts. Id. at 18. Both are set forth below.

(a) Respondents' Exceptions to Count Five of the OTSC

The Department stated that the Respondents claimed that the intent of the parties should be examined and then, the contract should be construed to avoid conflict. Ibid. The Department contended, however, that this matter is not a breach of contract action between the parties to a contract, but it is an enforcement action by a governmental regulator under a remedial statute for statutory penalties and restitution. Ibid. The Department additionally argued that the parties' intent is not applicable, as these contracts were clearly contracts of adhesion, drafted by the Respondents, and was essentially identical for all clients. Ibid. Therefore, where an ambiguity exists in a written agreement, the writing should be strictly construed against the drafter of the agreement. Ibid. (citing In re Estate of Miller, 90 N.J. 210, 221 (1982)).

The Department stated that the Respondents admitted that "[t]he first paragraph dealing with a 30% fee refers to the net proceeds received by the insurer." Id. at 19 (quoting the Respondents' Exceptions at 8). The Respondents then admitted that "[a]ny interpretation of this contract would come to the same conclusion: the client is in agreement to pay [APA] for their services in the form of their 30% fee of the net proceeds." Ibid. The Department argued that this statement is in direct contradiction to the contractual language that stated that the fee is charged "before deductions" on the gross award. Id. at 19.

The Department also pointed out that the fees charged were made on the gross award, not the net award actually paid. Ibid. The Department stated that the Respondents charging a fee on the gross award contradicts the statement made in their contracts that the fee would be charged on the "settlement proceeds paid" by the insurance company, which the Respondents admitted means the net award, not the gross award. Ibid. Therefore, the Department concluded that the Respondents are in violation of N.J.S.A. 17:22B-13(c), N.J.S.A. 17:22B-14(a)(1), and (4), N.J.S.A. 56:12-2, N.J.A.C. 11:1-37.13(a) and (b)(4), and N.J.A.C. 11:1-37.14(a)(1), (4), (13), and (17), and the ALJs appropriately ordered civil penalties and restitution under N.J.S.A. 17:22B-17. Id. at 19-20.

(b) Incorrect Assessment of Penalties/Restitution:

The Department stated that ALJ Sanders found for thirty-six contractual violations; however, she mistakenly assessed the penalty for thirty-five violations. Id. at 20. The Department requested that the Commissioner modify the penalty from $8,750 to $9,000.

Moreover, the Department stated that ALJ Sanders incorrectly removed the M.C. contract from the finding of liability, as well as the penalty and restitution. Ibid. The Department asserted that the basis for this finding was that the Patel Cert. included two contracts for M.C. and one settlement statement, and ALJ Sanders determined that the relationship between these documents was unclear. Ibid.

The Department contended that the settlement statement that set forth a loss date of October 11, 2013 (DOBI-0137) matches the M.C. contract dated October 23, 2013 (DOBI-0054) and not the M.C. contract dated October 30, 2013, which has a loss date of October 30, 2013 (DOBI-0053). Id. at 20-21. Therefore, the Department argued that because the M.C. contract dated October 23, 2013 is the one that matches the settlement statement marked as DOBI-00137, and that is the

contract that should be examined. Id. at 21. The Department further noted that this contract is in the older format used by the Respondents and referenced in the three contracts at issue in Count Four above. Ibid. The Department stated that this older contract provided that the fee is taken on the total paid net amount, when the fee was taken on the gross amount, which included unpaid amounts. Ibid.

Based upon the above-referenced argument, the Department requested that this M.C. contract be considered under Count Four of the OTSC, with an additional civil penalty imposed in the amount of $1,000. Ibid. Additionally, the Department stated that $631.18 in restitution that was not imposed by ALJ Sanders for this contract be added to the restitution ordered under Count Four of the OTSC. Ibid. The Department stated that courts have broad discretion to liberally permit amendment of pleadings to conform to the evidence. Ibid. (citing Cuesta v. Classic Wheels, Inc., 358 N.J. Super. 512, 517 (App. Div. 2003).

Count Six:

The Department stated that the Respondents' arguments in relation to Count Six of the OTSC are without merit. Id. at 22. Specifically, the Department asserted that New Jersey courts have found that broad and flexible standards in regulations and statutes satisfy the requirements of due process. Ibid. (citing In re Application of Boardwalk Regency Corp. for Casino License, 180 N.J. Super. 324, 346 (App. Div. 1981) (ruling that the term "good character" in the Casino Control Act was not unconstitutionally vague), aff'd in part and modified, 90 N.J. 361 (1982); In re Proc. By the Commr. Of Banking & Ins., 98 N.J. Super. 263, 273 (App. Div. 1967) (finding that the terms "unworthiness" and "incompetency" as used in a statute were not inappropriate standards of conduct)). The Department further noted that a statute or regulation is unconstitutionally vague where "it either forbids or requires the doing of an act in terms so vague that men of common

intelligence must necessarily guess as to its meaning and differ as to its application." Id. at 22-23 (quoting N.J. Ass'n of Health Care Facilities v. Finly, 168 N.J. Super. 152, 166 (App. Div. 1979), aff'd sub nom. In re Health Care Admin. Board, 83 N.J. 67 (1980)). The Department stated that the same constitutional standard for vagueness applies to both statutes and regulations, and New Jersey courts "recognize that regulations of certain kinds of subject matter and statutes must of necessity be general." Ibid.

The Department further noted that the New Jersey Supreme Court in In re Health Care Admin. Board found that the use of the term "reasonable" in a regulation adopted by the Commissioner of Health was sufficiently definite to provide notice to regulated nursing homes. Id. at 23 (citing In re Health Care Admin. Board, 83 N.J. at 82-83). The Department further stated that in that case, the nursing homes challenged a regulation requiring them to provide beds for indigent persons if the Department of Health ("DOH") determined that certain criteria were present. Id. (citing In re Health Care Admin. Board, 83 N.J. at 76). The regulation at issue required DOH to consider "whether the nursing home would be able to make a just and reasonable rate on equity if required to accept and care for indigent persons." Ibid. The Court held that the terms "just and reasonable" were "definite enough to satisfy the requirements of due process" because the terms are commonly used in similar contexts and have typically been interpreted and sustained by courts. Id. at 23-24 (citing In re Health Care Admin. Board, 83 N.J. at 82).

The Department argued that the term "reasonably related" in the public adjustment fee regulations have a common and obvious meaning, and the use of these words in the regulation function the same way that the word "just and reasonable" in the regulation at issue in In re Health Care Admin. Board functions. Id. at 24. The Department stated that the term "reasonable" is common throughout the field of insurance regulation, which, the Department argued, indicates that

the legislature has found the term sufficiently clear to provide notice and guide behavior. Ibid. (citation omitted).

The Department asserted that charging fees based on the gross, rather than net, payment, charging an administrative fee, charging more money than the client receives, and charging two separate fees are all types of fees that are not reasonably related to the services that a public adjuster provides. Ibid. The Department argued that the "[b]road language is necessary to effectuate the purpose of the Public Adjusters' Act, because a regulation cannot realistically enumerate all of the possible ways in which a public adjuster's fee can be unreasonable" and therefore, the regulation provided is adequate. Id. at 24-25.

Moreover, the Department argued that the fee cannot be charged on depreciation amounts that might or might not be paid a later date. Id. at 25. The Department stated that the Respondents' suggestion that it is acceptable for the Respondents to charge a fee on depreciation that is not yet paid and that the Department must prove the depreciation was never paid would, in essence, authorize the Respondents to charge a fee without any justification and the burden would fall on others to prove whether the fee is justified. Ibid. The Department stated that it is the Respondents' burden to justify the fees that they charge, and the Respondents are free to collect fees on depreciation amounts only when those additional monies are paid. Ibid. The Department asserted that "[t]o charge a fee on unpaid depreciation is by definition unreasonable and violates the contract terms and N.J.A.C. 11:1-37.13(b)(3)(ii)." Ibid.

LEGAL DISCUSSION

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. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (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).

As noted by the ALJs, N.J.A.C. 1:1-12.5(b) provides the standard to determine whether summary decision should be granted in a contested case. Specifically, the provision states that a summary decision may be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Ibid. The rule also provides that "when a motion for summary decision is made and supported, an adverse party, in order to prevail must, by responding affidavit, set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid.

In Brill v. Guardian Life Ins. Co. of America, the New Jersey Supreme Court clarified the summary judgment standard. The Court held that a determination as to whether there exists a genuine issue of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party. The court said:

> The judge's function is not himself (herself) to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. [citations omitted]. To send a case to trial, knowing that a rational jury can reach but one conclusion, is indeed worthless and will serve no useful purpose.

Brill, 142 N.J. at 541.

Motions for summary judgment in civil actions are considered under R. 4:46-2. It provides that the motion sought shall be granted if the evidence adduced shows there is no genuine issue as

to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. R. 4:46-2(b). An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact. R. 4:46-2(c). The Brill Court noted that "by its plain language, R. 4:46-2 dictates that a court should deny a summary judgment motion only where the party opposing the motion has come forward with evidence that creates a genuine issue as to any material fact challenged." Brill, 142 N.J. at 529.

Both ALJs found that the Respondents failed to adduce evidence that would create a genuine issue as to any material fact challenged and that summary decision is appropriate as to the allegations contained in Counts One through Six of the OTSC. I concur that summary decision is appropriate.

Allegations Against Respondents

For the reasons set forth in the PSD and Initial Decision, which incorporates the findings in the PSD, and based on the summary decision standard, I find that there exists no genuine issue of material fact as it relates to the Respondents' conduct and I ADOPT the statutory and regulatory violations found by ALJ Sanders and ALJ Gertsman under Counts One through Five of the OTSC, as set forth in the PSD, and Count Six of the OTSC, as set forth in the Initial Decision, except as discussed herein.

Count One

Count One of the OTSC alleges that between December 18, 2012 through January 23, 2013, Respondent APA, through Respondent Bellamy, entered into at least five contracts with New Jersey insureds without being licensed by the Commissioner, in violation of N.J.S.A. 17:22B-

3(a) and (b); N.J.S.A. 17:22B-14(a)(1), (4), and (5); and N.J.A.C. 11:1-37.14(a)(1), (4), (5), and (13). ALJ Sanders found as fact that the documents presented by the Department in support of the allegations found in the contracts at issue in this Count "speak for themselves" and found that APA, which was first licensed in this State on February 5, 2013, entered into five contracts in advance of its licensure and that Bellamy enabled those actions by executing the contracts on behalf of APA. PSD at 2-3.

The Respondents' arguments in their Exceptions that there is no requirement for APA to be licensed a public adjuster and that Bellamy was the public adjuster in these contracts are unfounded. N.J.S.A. 17:22B-3(a) specifically provides that "[n]o individual, firm, association or corporation shall act as an adjuster in this State unless authorized to do so by virtue of a license issued or renewed pursuant to this act." Moreover, N.J.A.C. 11:1-37.3(a) provides that "No person shall act as a public adjuster in this State on behalf of an insured unless licensed pursuant to this subchapter." N.J.A.C. 11:1-37.1 defines "person" to mean "any individual, corporation, organization, firm, association, partnership or other legal entity" and defines "public adjuster" to mean "any individual, firm, association or corporation . . . who, or which, for money, commission or any other thing of value, acts or aids in any manner on behalf of an insured in negotiating for, or effecting, the settlement of claims for loss or damage caused by, or resulting from, any accident, incident or occurrence covered under a property insurance policy." Under both the Public Adjusters' Act and accompanying regulations business entities, such as APA, are required to obtain a public adjuster license prior to engaging in the business of public adjusting. Additionally, as pointed out by the Department in its Reply to the Respondents' Exceptions, the contracts at issue were entered into between the insured and APA. Bellamy signed the contracts on behalf of

APA. As a named party to the contract, APA, in addition to Bellamy, was required to obtain a public adjuster license prior to engaging public adjusting in this State.

I also agree that the Respondents' argument that the allegations regarding licensure should have been brought in Superior Court rather in in this hearing, is without merit. As pointed out by the Department, the unlicensed issue is only one allegation over a six Count OTSC against the Respondents. In order to effectuate a resolution of all of the alleged violations against the Respondents pursuant to the entire controversy doctrine, the Department was required to bring all of the allegations against the Respondents at once. Therefore, the OAL was the appropriate venue to adjudicate these claims.

Accordingly, I concur with ALJ Sanders that the Department proved the allegations in Count One of the OTSC, and therefore, I FIND that the Respondents' actions, as alleged in Count One of the OTSC, constitute violations of N.J.S.A. 17:22B-3(a) ("No individual, firm, association or corporation shall act as an adjuster in this State unless authorized to do so by virtue of a license issued or renewed pursuant to this act") and N.J.S.A. 17:22B-3(b) ("No adjuster shall act on behalf of an insured unless licensed as a public adjuster").

ALJ Sanders failed to make determinations regarding whether the Respondents' actions, as alleged in Count One of the OTSC, constitute violations of N.J.S.A. 17:22B-14(a)(1) and N.J.A.C. 11:1-37.14(a)(1) (both permit the Commissioner to suspend or revoke a license if the licensee has violated any provision of the insurance law, including any rules promulgated thereunder); N.J.S.A. 17:22B-14(a)(4) and N.J.A.C. 11:1-37.14(a)(4) (both permit the Commissioner to suspend or revoke a license if the licensee has demonstrated the licensee's incompetency, lack of integrity, bad faith, dishonesty, financial irresponsibility or untrustworthiness to act as an adjuster); N.J.S.A. 17:22B-14(a)(5) and N.J.A.C. 11:1-37.14(a)(5)

(both permit the Commissioner to suspend or revoke a license if the licensee has aided, abetted or assisted another person in violating any insurance law of this State); and N.J.A.C. 11:1-37.14(a)(13) (permitting the Commissioner to suspend or revoke a license if the licensee "[h]as made any misrepresentation of facts or advised any person on questions of law in conjunction with the business as a public adjuster").

Here, Bellamy entered into these five contracts with New Jersey insureds on behalf of an entity, APA, that she knew was not licensed at the time that each of the contracts were executed. Bellamy, and by extension, APA, clearly demonstrated, at the least, incompetency in the practice of adjuster business, and at the most, lack of integrity, bad faith, and dishonesty by representing APA as being a licensed adjuster to New Jersey insureds, when it was clear that only Bellamy had been licensed as a public adjuster at the time that each of the five contracts were entered into, in violation of N.J.S.A. 17:22B-14(a)(4) and N.J.A.C. 11:1-37.14(a)(4). Accordingly, APA and Bellamy are additionally in violation of N.J.A.C. 11:1-37.14(a)(13) by their actions in misrepresenting APA's licensure status to New Jersey insureds, and then through that misrepresentation, allowing those same insureds to enter into contracts with APA, knowing that APA was not licensed as a public adjuster and was not permitted, under the Public Adjusters' Act, to enter into a contract for public adjuster services when it was not licensed at the time that the contracts were executed. Moreover, as Bellamy signed the contracts on behalf of a non-licensed entity, APA, she aided, abetted, and/or assisted this entity in violating the insurance laws of this state, in violation of N.J.S.A. 17:22B-14(a)(5) and N.J.A.C. 11:1-37.14(a)(5). Lastly, as ALJ Sanders and I have found that the Respondents did, in fact, violate provisions of the Public Adjusters' Act and the regulations promulgated thereunder, specifically, N.J.S.A. 17:22B-3(a) and (b); N.J.S.A. 17:22B-14(a)(4) and (5); and N.J.A.C. 11:1-37.14(a)(4), (5), and (13) by APA

entering into contracts with New Jersey insureds for public adjuster services prior to obtaining licensure in this State and by Bellamy executing those contracts on behalf of APA, as set forth above, the Respondents' actions additionally constitute violations of N.J.S.A. 17:22B-14(a)(1) and N.J.A.C. 11:1-37.14(a)(1) (both permit the Commissioner to suspend or revoke a license if the licensee has violated any provision of the insurance law, including any rules promulgated thereunder).

Accordingly, I MODIFY[40] the PSD and Initial Decision and FIND that the Respondents' actions, as alleged in Count One of the OTSC, also constitute violations of N.J.S.A. 17:22B-14(a)(1) and (4); and N.J.A.C. 11:1-37.14(a)(1), (4), and (13). I additionally MODIFY the Initial Decision and FIND that Bellamy's actions in aiding, abetting, and assisting APA in violating this State's insurance laws in Count One of the OTSC, constitute a violation of N.J.S.A. 17:22B-14(a)(5) and N.J.A.C. 11:1-37.14(a)(5).

Count Two

Count Two of the OTSC alleges that between January 8, 2014 through June 6, 2014, Respondent APA, through Respondent Bellamy, entered into eight contracts with insureds between 6:00 p.m. and 8:00 a.m. during the twenty-four hours after the loss occurred, in violation of N.J.S.A. 17:22B-13(b); N.J.S.A. 17:22B-14(a)(1) and (4); and N.J.A.C. 11:1-37.13(d). ALJ Sanders found that all eight contracts presented by the Department in support of the allegations set forth in Count Two of the OTSC were entered into during the proscribed time period within the

[40] Pursuant to N.J.A.C. 1:1-18.6(b), the Commissioner "may reject or modify conclusions of law, interpretations of agency policy, or findings of fact not relating to issues of credibility of lay witness testimony, but shall clearly state the reasons for so doing." N.J.A.C. 1:1-18.6(b) additionally provides that the final decision rejecting or modifying the initial decision must "state in clear and sufficient detail the nature of the rejection or modification, the reasons for it, the specific evidence at hearing and interpretation of law upon which it is based and precise changes in result or disposition caused by the rejection or modification."

twenty-four hours after the loss occurred, and that Bellamy signed each of the eight referenced contracts on behalf of APA. PSD at 10. The Respondents admit to entering into these contracts during the prohibited timeframe. Respondent Exceptions at 7. Accordingly, I concur with ALJ Sanders that the Department proved the allegations in Count Two of the OTSC, and therefore, I FIND that the Respondents' actions, as alleged in Count Two of the OTSC, constitute violations of N.J.S.A. 17:22B-13(b) and N.J.A.C. 11:1-37.13(d) (both prohibit public adjusters from entering into any agreement with an insured to negotiate or settle claims for loss or damages occurring in this State between the hours of 6:00 p.m. and 8:00 a.m. during the twenty-four hours after the loss has occurred); and N.J.S.A. 17:22B-14(a)(4) (permitting the Commissioner to suspend or revoke a license if the licensee has demonstrated the licensee's incompetency, lack of integrity, bad faith, dishonesty, financial irresponsibility or untrustworthiness to act as an adjuster). Specifically, I agree with ALJ Sanders and FIND that the Respondents' actions in Count Two of the OTSC demonstrate incompetency and bad faith under N.J.S.A. 17:22B-14(a)(4).

ALJ Sanders failed to make determinations regarding whether the Respondents' actions, as alleged in Count Two of the OTSC, constitute a violation of N.J.S.A. 17:22B-14(a)(1) (permitting the Commissioner to suspend or revoke a license if the licensee has violated any provision of the insurance law, including any rules promulgated thereunder). However, as ALJ Sanders found that the Respondents did, in fact, violate provisions of the Public Adjusters' Act and the regulations promulgated thereunder, specifically, N.J.S.A. 17:22B-13(b), N.J.S.A. 17:22B-14(a)(4), and N.J.A.C. 11:1-37.13(d), by entering into contracts with New Jersey insured for public adjuster services during the prohibited time period within the twenty-four hours after the losses occurred, as set forth above, the Respondents' actions, additionally constitute violations of N.J.S.A. 17:22B-14(a)(1). Accordingly, I MODIFY the PSD and Initial Decision and FIND that

the Respondents' actions, as alleged in Count Two of the OTSC, also constitute a violation of N.J.S.A. 17:22B-14(a)(1).

Count Three

Count Three of the OTSC alleges that between December 2012 through July 2014, Respondent APA, through Respondent Bellamy: (1) entered into at least forty-two public adjuster contracts with New Jersey insureds that did not prominently include a section that specified the procedures by which an insured may cancel the contract; (2) entered into at least seven public adjuster contracts with New Jersey insureds that did not contain the time that the contract was executed; and (3) entered into a contract that did not contain the signature of the licensed public adjuster, in violation of N.J.S.A. 17:22B-14(a)(1) and (4); N.J.A.C. 11:1-37.13(b)(3)(i) and (iii); N.J.A.C. 11:1-37.13(b)(5)(i), (ii), and (iii); and N.J.A.C. 11:1-37.14(a)(1), (4), and (17).

ALJ Sanders found that the Department had proven that forty-two contracts had a form of instruction regarding cancellation that fell short because the rights and obligations of the parties was not clearly set forth and the costs to the insureds for services rendered were unclear. PSD at 12. The Respondents' arguments contained in their Exceptions are without merit. The Respondents argued that there is nothing in the Public Adjusters' Act or regulations that require an insured be given the ability to unilaterally cancel a public adjuster contract at any time. Respondent Exceptions at 3-4. The Legislature granted the Commissioner authority to promulgate any regulations that may have been necessary to effectuate the purposes of the act, which undoubtedly includes the protections of consumers from unfair practices by public adjusters. See N.J.S.A. 17:22B-20, N.J.S.A. 17:22B-3, N.J.S.A. 17:22B-12, and N.J.S.A. 17:22B-13. The Department was well within its authority under the Public Adjusters' Act to promulgate regulations that require that insureds be permitted to cancel their contracts at any time. While the Respondents

argue that no regulation to this end exists, they are incorrect. N.J.A.C. 11:1-37.13(b)(5)(i) and (ii) state that a public adjuster contract must "prominently include a section which specifies . . . [t]he procedure to be followed by the insured if he or she seeks to cancel the contract, including any requirement of written notice" and must "prominently include a section which specifies . . . [t]he rights and obligations of the parties if the contract is cancelled at any time." Ibid. N.J.A.C. 11:1-37.13(b)(5)(iii) provides that the contract must set forth "[t]he costs to the insured or the formula for the calculation of costs to the insured for services rendered in whole or in part." The regulations clearly set forth the requirement that insureds are free to cancel a contract at any time, even after the three days specified in the Respondents' contracts. The Respondents' contracts improperly suggest that cancellation is only permitted during those three days. Accordingly, I concur with ALJ Sanders's findings in relation to this matter.

ALJ Sanders additionally found that the Respondents entered into seven contracts that did not contain the times the contracts were executed and additionally, found that there was one contract that failed to contain a signature of the insured and public adjuster. PSD at 12-13. The Respondents admit that there were contracts that did not include the time the contracts were executed and that a signature is missing from one of the contracts. Respondent Exceptions at 3, 7. As such, I concur with ALJ Sanders's findings in relation to these allegations as well.

In light of the above, I concur with ALJ Sanders that the Department proved the allegations in Count Three of the OTSC, and therefore, I FIND that the Respondents' actions, as alleged in Count Three of the OTSC, constitute violations of N.J.A.C. 11:1-37.13(b)(3)(iii) (providing that a contract between a licensed public adjuster and an insured must contain the time and date of the execution of the contract (day, month, and year) by each party) N.J.A.C.11:1-37.13(b)(5). However, ALJ Sanders did not set forth the individual provisions of the regulation that the

Respondents' actions, as alleged in Count Three of the OTSC, violated. Accordingly, I MODIFY the PSD and Initial Decision and FIND that the Respondents' actions, as set forth in Count Three of the OTSC, constitute violations of N.J.A.C. 11:1-37.13(b)(5)(i) (providing that a contract between a licensed public adjuster and an insured must prominently include the procedures to be followed by the insured to cancel the contract, including any written notice), N.J.A.C. 11:1-37.13(b)(5)(ii) (providing that a contract between a licensed public adjuster and an insured must include the rights and obligations of the parties if the contract is cancelled), and N.J.A.C. 11:1-37.13(b)(5)(iii) (providing that a contract between a licensed public adjuster and an insured must include the costs to the insured or the formula to calculate costs to the insured for services rendered).

I also concur with ALJ Sanders and FIND that APA violated N.J.A.C. 11:1-37.13(b)(3)(i) (providing that contracts between a licensed public adjuster and insured must include the signatures of the public adjuster and insured). However, I do not agree with ALJ Sanders's assessment that there is "no evidence [to] link . . . Bellamy to the unsigned contract [and] she is not liable for one of the fifty violations." PSD at 16. Bellamy is the owner of APA, and Bellamy acts on behalf of APA in business matters. Every contract presented by the Department in this matter set forth Bellamy's signature on behalf of APA. There has been no evidence presented that any other licensed public adjuster would have been responsible for signing the contract on behalf of APA. Accordingly, I MODIFY the PSD and Initial Decision and FIND that Bellamy additionally violated N.J.A.C. 11:1-37.13(b)(3)(i) by failing to sign a public adjuster's contract on behalf of APA.

ALJ Sanders failed to make determinations regarding whether the Respondents' actions, as alleged in Count Three of the OTSC, constitute violations of N.J.S.A. 17:22B-14(a)(1) and

N.J.A.C. 11:1-37.14(a)(1) (both permit the Commissioner to suspend or revoke a license if the licensee has violated any provision of the insurance law, including any rules promulgated thereunder); N.J.S.A. 17:22B-14(a)(4) and N.J.A.C. 11:1-37.14(a)(4) (both permit the Commissioner to suspend or revoke a license if the licensee has demonstrated the licensee's incompetency, lack of integrity, bad faith, dishonesty, financial irresponsibility, or untrustworthiness to act as an adjuster); and N.J.A.C. 11:1-37.14(a)(17) (permitting the Commissioner to suspend or revoke a license if the licensee has committed any other act, or omission which the Commissioner determines to be inappropriate conduct by a licensee of this State).

Here, Bellamy, on behalf of APA, entered into fifty contracts with New Jersey insureds where the contractual language did not conform to the requirements of the regulations governing the content of public adjuster contracts. The minimum standards set forth in the regulations are designed to protect consumers from entering into contracts with unscrupulous public adjusters by clearly and prominently setting forth each party's rights and obligations under the contracts they are signing. By failing to set forth these requirements in these fifty contracts, the Respondents were incompetent in their drafting of these contracts and additionally, acted in an untrustworthy and dishonest manner towards the insureds they contracted with, in violation of N.J.S.A. 17:22B-14(a)(4) and N.J.A.C. 11:1-37.14(a)(4). Further, the Respondents' failed to provide these minimum standards, disclosures, and/or signatures on these contracts. These omissions constitute inappropriate conduct on the part of the Respondents in dealing with their clients, in violation of N.J.A.C. 11:1-37.14(a)(17). Lastly, as ALJ Sanders and I have found that the Respondents did violate provisions of the Public Adjusters' Act and the regulations promulgated thereunder, specifically, N.J.S.A. 17:22B-14(a)(4); N.J.A.C. 11:1-37.13(b)(5)(i), (ii), and (iii); N.J.A.C. 11:1-

37.13(b)(3)(i) and (iii); and N.J.A.C. 11:1-37.14(a)(4) and (17), by executing fifty contracts without the required language, disclosures, or signatures set forth in the regulations, the Respondents' actions additionally constitute violations of N.J.S.A. 17:22B-14(a)(1) and N.J.A.C. 11:1-37.14(a)(1). Accordingly, I MODIFY the PSD and Initial Decision FIND that the Respondents' actions, as alleged in Count Three of the OTSC, also constitute violations of N.J.S.A. 17:22B-14(a)(1) and (4); and N.J.A.C. 11:1-37.14(a)(1), (4), and (17).

Count Four

Count Four of the OTSC alleges that APA, through Bellamy, entered into at least four[41] contracts with New Jersey insureds and failed to adhere to the compensation provisions of each of its own contracts with those insureds, in violation of N.J.S.A. 17:22B-13(c); N.J.A.C. 17:22B-14(a)(1) and (4); N.J.A.C. 11:1-37.13(a); and N.J.A.C. 11:1-37.14(a)(1), (4), and (17). ALJ Sanders found that the Department had proven that in two instances, the Respondents collected a percentage of the total damage award, as opposed to a percentage of what the insurance company actually paid the insureds after considering depreciation and deductibles and thus, the Respondents overcharged their clients. PSD at 13. Additionally, ALJ Sanders found that the Respondents charging insureds in excess of the contractual amount demonstrates incompetency, financial irresponsibility, and untrustworthiness as adjusters. Ibid. The Respondents' Exceptions in relation to Count Four of the OTSC do not address the inconsistency alleged in this Count, but instead assert that there is no statute or regulation that prohibits a public adjuster from collecting their fee from the gross amount. Respondent Exceptions at 7. However, that is not the substance of the

[41] The OTSC alleges violations contained in four contracts with New Jersey insureds: G.D, T.S., S.D., and O.F. However, the contract with S.D. was not discussed by ALJ Sanders nor discussed in the Department's motion for summary decision presented in this matter. Accordingly, the contract with S.D. will not be discussed in this Final Decision and Order.

allegations contained in Count Four of the OTSC. Count Four of the OTSC alleges that the Respondents collected a fee in excess of the fee set forth in their own contracts with insureds, not whether the Respondents were permitted to collect said fee in the way that they did, which is the substance of the allegations contained in Counts Five and Six of the OTSC. Here, there is a clear inconsistency between the contractual terms, which provided that the Respondents' fee would be taken from "the total insurance settlement proceeds paid" to the insured by the insurance company, or the net amount, and the Respondents actually collecting their fee from the gross amount before deducting the unpaid depreciation and deductible. Additionally, the Respondents admitted that they did collect their fee from the gross award rather than the net amount, specified in their contracts. Accordingly, I concur with ALJ Sanders that the Department proved the allegations in Count Four of the OTSC as it relates to the two contracts with insureds G.D. and T.S. Therefore, I FIND that the Respondents' actions, as alleged in Count Four of the OTSC, constitute violations of N.J.S.A. 17:22B-14(a)(4) and N.J.A.C. 11:1-37.14(a)(4) (both permit the Commissioner to suspend or revoke a license if the licensee has demonstrated the licensee's incompetency, lack of integrity, bad faith, dishonesty, financial irresponsibility or untrustworthiness to act as an adjuster).

I ADOPT ALJ Sanders's finding that G.D. was overcharged in the amount of $323.71. APA collected a fee of $1,265.67, based on the total amount of the award, without first deducting the depreciation and the deductible in the amount of $1,294.84. DOBI-0199 attached to the Patel Cert. at Exhibit C. Had APA based their fee on this amount, their fee would have been $941.95, a difference of $323.71.

However, I disagree with the ALJ's calculations as to the dollar amount that the Respondents overcharged client T.S. Specifically, the Respondents' January 15, 2013 contract with T.S., marked as DOBI-0012, provides that the Respondents were entitled to thirty percent "of

the total insurance settlement proceeds paid to you by your insurance company" related to "Windstorm" damage from Superstorm Sandy, occurring on October 29, 2012. DOBI-0012 attached to the Patel Cert. at Exhibit C (emphasis added). While ALJ Sanders referenced DOBI-0195 as the Settlement Statement in this matter, the record provides that there were actually three separate Settlement Statements for the T.S. contract with the same October 29, 2012 date of loss for "Windstorm" damage. See DOBI-0195, DOBI-0196, and DOBI-0197 attached to the Patel Cert. at Exhibit C. Two of these Settlement Statements, DOBI-0195 and DOBI-0196 provide that the Respondents collected their thirty percent fee based on the total amount of the award, without first subtracting the deductible and depreciation amounts, in violation of their contract with T.S.[42]

The Settlement Statement marked as DOBI-0195, referenced by ALJ Sanders, is dated April 15, 2013 and provides that the "Full Settlement Amount" for "Structural (Dwelling)" was $9,399.51. The Respondents collected their thirty percent fee based on this total amount, without first subtracting the deductible in the amount of $500 and the depreciation in the amount of $2,187.18. However, the deductible and depreciation amounts were not paid to T.S. and therefore, the Respondents, under their own contracts with T.S., were not entitled to collect thirty percent of these amounts. The Respondents were only entitled to a thirty percent fee of the settlement amount after the deductible and depreciation were subtracted, which in this case, would have been

[42] For the third settlement statement, which is marked as DOBI-0197 and dated April 26, 2013, the Respondents correctly charged T.S. the fee under their contract, as there is no reference to a deducible or depreciation on that statement. The "Supplemental Amount" for the "Structural (Dwelling)" referenced on this settlement statement was $1,160.63. The Respondents collected a fee of $348.19. Therefore, this settlement statement will not be further referenced.

$6,712.33. The Respondents' fee should have been $2,013.70,[43] which is $806.15[44] less than the Respondents actually collected from T.S. on this settlement statement.

The settlement statement marked as DOBI-0196 is dated April 26, 2013 and provides that the "Supplement Amount" for "Structural (Dwelling)" was $1,511.68. The Respondents collected their thirty percent fee based on this total, without first subtracting the deductible, in the amount of $304.09. As the deductible amount was not paid to T.S., the Respondents, under their own contract with T.S., were not entitled to collect thirty percent of this amount. Therefore, the Respondents were only entitled to a thirty percent fee of the settlement amount after the deductible was subtracted, which in this case, would have been $1,207.59. The Respondents' fee should have been $362.28, which is $91.22 less than the Respondents actually collected from T.S. on this settlement statement.

Based upon these two settlement statements, the Respondents overcharged T.S., under the terms of their own contract with T.S., dated January 15, 2013, by a total of $897.37.[45] Accordingly, I MODIFY the PSD and Initial Decision and FIND that the Respondents overcharged T.S. by $897.37, rather than the $805.65 originally found by ALJ Sanders.

Additionally, I disagree with ALJ Sanders in her assessment that the evidence presented by the Department failed to prove that the Respondents did not to adhere to the compensation

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[43] The total amount of settlement was $9,399.51, less $2,687.18 in deductible and depreciation is $6,712.33. Thirty percent of $6,712.33 is $2,013.70.

[44] ALJ Sanders stated that T.S. was overcharged by $805.65. PSD at 7. This amount is based on the chart provided in Exhibit D to the Patel Cert. However, the calculation does not take into account DOBI-0196, as discussed above. Further, the chart indicates that APA's fee was $2,819.35, and not $2,819.85. This seems to be a typographical error.

[45] The difference of $806.15 from DOBI-0195 added to the difference of $91.22 from DOBI-0196 is $897.37.

provisions of their contract with O.F. ALJ Sanders found that the contract with O.F., marked as DOBI-0010, and the settlement statement, marked as DOBI-0203, both relate to a "wind-driven-rain" claim and that the total award was $1,266.28 and APA collected a $250 administrative fee on that award. PSD at 6. However, ALJ Sanders noted that the Department points to a settlement statement, marked as DOBI-0202, with a total negotiated award of $25,790.52 to allege that the Respondents charged more than permitted under the contract with O.F. Ibid. ALJ Sanders stated that "the Department points to no associated contract" related to the settlement statement marked as DOBI-0202. Ibid. However, it appears that ALJ Sanders misunderstood how these three documents relate to each other.

The contract with O.F. (DOBI-0010) related to a "wind-driven-rain" claim with a loss occurring on October 29, 2012 and was entered into between the Respondents and O.F. on December 26, 2012. DOBI-0010 attached to the Patel Cert. at Exhibit C. The Respondents provided two settlement statements to O.F., one dated May 10, 2013 (DOBI-0202) and one dated November 21, 2013 (DOBI-0203). DOBI-0202 and DOBI-0203 attached to the Patel Cert. at Exhibit C. While the May 10, 2013 settlement statement (DOBI-0202) provides that it was for a "Windstorm" loss and the November 21, 2013 settlement statement (DOBI-0203) provides that it was for a "Wind Driven Rain" loss, both relate to the same loss that occurred on October 29, 2012, as set forth in the contract with O.F. at DOBI-0010. Therefore, both settlement statements are associated with the contract referenced.

The May 10, 2013 settlement statement (DOBI-0202) relates to a "total negotiated award" of $25,790.52, and in that settlement statement, the Respondents took a fee of $7,737.16, which was thirty percent of that total amount, even though that total amount included O.F.'s deductible, in the amount of $250, and recoverable depreciation, in the amount of $4,377.52, were not

recovered by O.F. at the time that the settlement statement was issued to O.F. Additionally, the $25,790.52 "total negotiated award" included an "EMS (Advanced Restoration)" fee of $2,783.51, which was paid from the "total negotiated award" and again, does not appear to have been received by O.F.[46] O.F.'s contract with the Respondents stated that APA was entitled to a fee equal to thirty percent "of the total insurance settlement proceeds paid to you by your insurance company and is due and payable from each insurance check or draft in the percentage listed herein." See DOBI-0010 attached to Patel Cert. at Exhibit C (emphasis added). As the deductible, depreciation, and EMS fee were not paid to O.F. by the insurance company, the Respondents were not entitled to collect their thirty percent fee based on these amounts. The Respondents were entitled to collect the thirty percent[47] fee under the contract on the $18,379.49 payout to O.F. from the insurance company, after the deductible, depreciation, and EMS fee were subtracted from the total award. Therefore, the fee, under O.F.'s contract for public adjuster services, should have been $5,513.85, not $7,737.16, as the Respondents collected, a difference of $2,223.31.

Moreover, the November 21, 2013 settlement statement (DOBI-0203) relates to an award for recoverable depreciation in the amount of $1,266.28.[48] This depreciation amount is part of the

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[46] The Department, in their calculations, failed to subtract this fee from the "total negotiated settlement amount" and only removed the deductible and depreciation. Therefore, the Department erroneously calculated the Respondents' thirty percent fee off of this amount as well. However, this is a fee paid that was related to the incurred loss, prior to the award being issued by the insurance company. The Respondents are not entitled to collect a fee on this amount. In fact, on several of the settlement statements for other clients, the Respondents did remove the EMS fee before calculating their fee.

[47] The settlement statement marked as DOBI-0202 provides that the fee is twenty-five percent, however, this is incorrect. The contract marked as DOBI-0010 states that the fee to be collected is thirty percent and the actual amount the Respondents collected on settlement statement DOBI-0202 is thirty percent of the gross award.

[48] While this supplemental settlement statement is discussed in Count Six of the OTSC, it should be addressed under Count Four as well, because the Respondents were entitled to collect their fee based on this amount once the insurance company paid that amount to the insured. Accordingly,

of $4,377.52 depreciation amount set forth in the May 10, 2013 settlement statement, which had not been paid to O.F. at the time the May 10, 2013 settlement statement (DOBI-0202) was provided to O.F. Because the Respondents had already taken thirty percent of this amount under the May 10, 2013 settlement statement (DOBI-02020), they did not take thirty-percent of the $1,266.28 award with the November 21, 2013 settlement statement (DOBI-0203). However, the Respondents did collect a $250 "administrative fee." This administrative fee on recoverable depreciation was not set forth in the Respondents' contracts with O.F. and therefore, the Respondents were not entitled to this fee.[49] However, the Respondents are entitled to thirty percent of the $1,266.28 award on this statement, as it was actually paid to O.F., as set forth in their contract with O.F. Therefore, the Respondents were entitled to collect a fee of $379.88 as it relates to the November 21, 2013 settlement statement (DOBI-0203).

Based upon settlement statements provided and the calculations above, the Respondents, under their contract with O.F., marked as DOBI-0010, were entitled to a total fee of $5,893.73,[50] which is $2,093.43[51] less than the Respondents actually collected from O.F. Therefore, the Respondents did not adhere to the compensation provisions of their contract with O.F. and collected a higher fee than they should have ultimately collected under the contract. Accordingly,

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this will directly modify the restitution that was requested by the Department in its Motion for Summary Decision and the amount ultimately owed to O.F. in relation to this matter.

[49] Collecting this $250 fee on top of the thirty percent already charged by the Respondents is unreasonable and not reasonably related to the services provided. This point is discussed further in Count Six below.

[50] The correct fee on DOBI-0202 of $5,513.85 added to the correct fee on DOBI-0203 of $379.88 is $5,893.73.

[51] The total fee actually collected by the Respondents of $7,987.16 on DOBI-0202 and the $250 administrative fee from DOBI-0203 is $7,987.16. The difference between the correct fee of $5,893.73 and the fee actually taken is $2,093.43.

I MODIFY the PSD and Initial Decision and FIND that the Department proved the allegations in Count Four of the OTSC as it relates to the Respondents' contract with O.F., and that the Respondents' actions constitute violations of N.J.S.A. 17:22B-14(a)(4) and N.J.A.C. 11:1-37.14(a)(4).

In its Reply to the Respondents' Exceptions, the Department requested that the contract with M.C., marked as DOBI-0054, be included in Count Four of the OTSC rather than in Count Five of the OTSC where it was alleged. Department Reply at 21. The Department stated that the contract at issue contains the "old" form language that the Respondents included in the G.D., T.S., and O.F. contracts above rather than the "new" form language that is contained in the contracts discussed in Count Five and Six of the OTSC. Ibid. ALJ Sanders did not award restitution or recommend civil penalties in relation to this contract because it was unclear to her how DOBI-0054 and another contract with M.C., marked as DOBI- 0053, related to the settlement statement, marked as DOBI-0137. PSD at 9.

The contract marked as DOBI-0053, deals with a "garbage disposal leak" claim that occurred on October 30, 2013, and contains the conflicting language discussed in Count Five and Count Six below. The contract marked as DOBI-0054, relates to a "water leak-toilet" that occurred on October 11, 2013, and contains language that stated that the Respondents would collect their thirty percent fee "from each total insurance settlement proceeds paid to you by your insurance company." It does not contain an additional conflicting paragraph that DOBI-0053 contains. As the Department explained in their Reply, the settlement statement, marked as DOBI-0137 relates to a "Water Damage" claim that occurred on October 11, 2013. Department Reply at 21. This settlement statement, therefore, relates to the contract with M.C. marked as DOBI-0054. It appears

that the Department did not produce a settlement statement that relates to M.C.'s other contract, marked as DOBI-0053.

Because the contract marked as DOBI-0054 is the same form contract that the Respondents used with G.D., T.S., and O.F., it should have been included in Count Four of the OTSC, rather than Count Five of the OTSC. Only the contract marked as DOBI-0053 is contradictory and is appropriately discussed and included in the allegations contained in Count Five of the OTSC.

As noted by the Department in its Reply, courts have broad discretion to liberally permit amendment of pleadings to conform to the evidence. Department Reply at 21, (citing Cuesta, 38 N.J. Super at 517). Moreover, 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. For example, in Commissioner v. Furman, OAL Dkt. No. BKI 3891-06, Initial Decision (06/21/07), Final Decision and Order (09/17/07), the Order to Show Cause did not allege that the respondent supplied false information to an insurer; however, the respondent admitted to supplying said false information during cross examination. Accordingly, 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. . . ." Ibid. See also, Commissioner v. Citron, OAL Dkt. No. BKI-17272-15, Initial Decision (12/21/18), Final Decision and Order (05/06/19); and Commissioner v. Charles, OAL Dkt. No. BKI-06530-14, Initial Decision (03/02/15), Final Decision and Order (08/28/15).

Here, though the contracts with M.C. were discussed in relation to Count Five of the OTSC, the Respondents had an opportunity to contest the contractual issues contained in DOBI-0053 and

DOBI-0054, as well as the contractual issues with G.D., T.S., and O.F., which contain the exact same contractual language included in DOBI-0054. The proofs submitted show that the Respondents' contract with M.C. advised that they would collect a thirty percent fee from the net insurance proceeds. However, the settlement statement, marked as Exhibit DOBI-0137 shows that the Respondents collected their thirty percent fee off of the gross amount, before the deductible and deprecation were subtracted. Specifically, the total negotiated award to M.C., before the deductible in the amount of $1,000 and depreciation in the amount of $1,307.24 were deducted was $8,206.58. The Respondents collected a fee of $2,461.98, which was thirty percent of the total negotiated award. According to their own contract with M.C., the Respondent should have collected their thirty percent fee off of the net award of $5,899.34, which would have been $1,769.80. Because of this, the Respondents collected a fee of $692.18 in excess of what their contract informed M.C. they would receive.

Therefore, in the interests of efficiency, expediency, and the avoidance of over-technical pleading requirements, and since this amendment of the pleadings would not unduly prejudice the Respondents, I AMEND the OTSC to include the contract with M.C. marked as DOBI-0054 in the violations contained in Count Four of the OTSC, rather than Count Five of the OTSC. Additionally, I MODIFY the PSD and Initial Decision and FIND that the Respondents' actions, in relation to this contract with M.C., constitute violations of N.J.S.A. 17:22B-14(a)(4) and N.J.A.C. 11:1-37.14(a)(4). Lastly, I MODIFY the PSD and FIND that the Respondents overcharged M.C. in the amount of $692.18.

ALJ Sanders additionally found that the Respondents' actions, as alleged in Count Four of the OTSC, constituted a violation of N.J.A.C. 11:1-37.14(a)(8), which prohibits licensed adjusters from collecting "from any client any fee other than that agreed to in the employment contract in a

form required by N.J.A.C. 11:1-37.13." However, the OTSC does not allege that the Respondents violated this provision, but instead, alleges that the Respondents violated a specific provision of N.J.A.C. 11:1-37.13, which is referenced in N.J.A.C. 11:1-37.14(a)(8). Specifically, the OTSC alleges that the Respondents violated N.J.A.C. 11:1-37.13(a) (prohibiting a public adjuster from having any right to compensation from any insured for services rendered to an insured as a public adjuster unless the right to compensation is based upon a written contract between the adjuster and the insured and specifying the services to be rendered and the amount or extent of the compensation).

As noted above, 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." Here, although not set forth as a regulatory violation in the OTSC, the Department did allege that the Respondent violated N.J.A.C. 11:1-37.13(a), which is referenced in N.J.A.C. 11:1-37.14(a)(8). Both provisions prohibit licensed public adjusters from collecting a fee other than the fees clearly designated in the contract with the insured. Facts supporting the Department's allegations that the Respondents collected fees higher than set forth in the compensation provisions of their own contracts were alleged in the OTSC, and form a basis to find a violation of N.J.A.C. 11:1-37.14(a)(8). Moreover, the Department set forth this provision in its January 13, 2017 Motion for Summary Decision giving the Respondents an opportunity to contest these allegations, including their violation of N.J.A.C. 11:1-27.14(a)(8). See Department's January 13, 2017 Motion for Summary Decision at 20-21. As noted above, ALJ Sanders found that the Respondents did not adhere to the compensation provisions of their own contracts and collected a fee higher than that set forth in two of these contracts. Additionally, as

noted above, I modified the PSD and Initial Decision and found that the Respondents also did not adhere to the compensation provisions of a third and fourth contract and collected a fee higher than set forth in that contract. Therefore, in the interests of efficiency, expediency, and the avoidance of over-technical pleading requirements, and since this amendment of the pleadings would not unduly prejudice the Respondents, the OTSC in this matter should be conformed to reflect the record in this matter. I concur with the ALJ's determination and FIND that the Respondents failed to adhere to the compensation provisions of their own contracts with G.D., T.S., O.F., and M.C. and collected fees that were higher than those set forth in their contracts in violation of N.J.A.C. 11:1-37.14(a)(8). I AMEND the OTSC accordingly. Additionally, as ALJ Sanders found that the Respondents did collect fees above those set forth in their contracts, I additionally MODIFY the PSD and FIND that the Respondents' actions, as set forth in Count Four of the OTSC, with regards to the Respondents' contracts with G.D, T.S., O.F., and M.C. also constitute violations of N.J.A.C. 11:1-37.13(a).

ALJ Sanders failed to make determinations regarding whether the Respondents' actions, as alleged in Count Four of the OTSC, constitute violations of N.J.S.A. 17:22B-13(c) (prohibiting licensed public adjusters from having any right to compensation from any insured for any services rendered unless the right to compensation is based upon a written memorandum, signed by the party to be charged and the adjuster, and clearly defining the services to be rendered and the amount of the compensation); N.J.S.A. 17:22B-14(a)(1) and N.J.A.C. 11:1-37.14(a)(1) (both permit the Commissioner to suspend or revoke a license if the licensee has violated any provision of the insurance law, including any rules promulgated thereunder); and N.J.A.C. 11:1-37.14(a)(17) (permitting the Commissioner to suspend or revoke a license if the licensee has committed any

other act, or omission, which the Commissioner determines to be inappropriate conduct by the licensee).

As detailed above, ALJ Sanders found that the Respondents collected a fee on the gross settlement amount that was not permitted under the Respondents' own contracts with G.D. and T.S. Additionally, I have found that the Respondents collected a fee above the amount that was permitted under the Respondents' own contract with O.F. and M.C. Therefore, the Respondents collected compensation for services in four separate instances that were not based upon or clearly defined in the written contracts they entered into with insureds. Accordingly, I MODIFY the PSD and Initial Decision and FIND that the Respondents' conduct, as alleged in Count Four of the OTSC, constitutes a violation of N.J.S.A. 17:22B-13(c). The Respondents' conduct in relation to these three insureds is inappropriate in the business of adjusting services, and I MODIFY the PSD and Initial Decision and FIND that the Respondents' conduct, as alleged in Count Four of the OTSC, constitutes a violation of N.J.A.C. 11:1-37.14(a)(17). Lastly, as ALJ Sanders and I have found that the Respondents have violated provisions of the Public Adjusters' Act and the regulations promulgated thereunder, specifically, N.J.S.A. 17:22B-13(c), N.J.S.A. 17:22B-14(a)(4); N.J.A.C. 11:1-37.13(a); and N.J.A.C. 11:1-37.14(a)(3), (8), and (17), I additionally MODIFY the PSD and Initial Decision and FIND that the Respondents' actions, as alleged in Count Four of the OTSC, constitute violations of N.J.S.A. 17:22B-14(a)(1) and N.J.A.C. 11:1-37.14(a)(1).

ALJ Sanders found that the Respondents' actions, as alleged in this Count, constitute violations of N.J.A.C 11:1-37.17. This provision relates to public records and was not alleged as a violation in the OTSC in this matter. As such, I REJECT this finding by the ALJ and MODIFY the PSD and Initial Decision accordingly.

Count Five

Count Five of the OTSC alleges that between December 2012 and July 2014, Respondent APA, through Respondent Bellamy entered into at least thirty-seven public adjuster contracts with New Jersey insureds wherein the Respondents failed to clearly define the amount or extent of the Respondents' compensation for public adjuster services, in violation of N.J.S.A. 17:22B-13(c); N.J.S.A. 17:22B-14(a)(1) and (4); N.J.S.A. 56:12-2; N.J.A.C. 11:1-37.13(a); N.J.A.C. 11:1-37.14(a)(1), (4), and (14); and N.J.A.C. 11:1-37.13(b)(4). ALJ Sanders found that the Department had proven that thirty-five of the thirty-seven referenced contracts were internally inconsistent. See PSD at 7-9 and footnotes 3, 14, and 15 infra. Additionally, ALJ Sanders found that the Department had demonstrated that the Respondents charged $26,387.36 more than the first paragraph of the contracts informed the insureds that they would be charged. PSD at 9-10.

The Respondents' Exceptions in relation to Count Five that the contracts were internally consistent are also groundless. Respondent Exceptions at 8. Specifically, as noted by the Department, this is an action by a State regulator to impose statutory penalties and restitution. This is not a private breach of contract matter between two individuals. Department Reply at 18. The Department is under no obligation to construe the contracts at issue to avoid conflicting terms. Additionally, the Respondents admitted that the first paragraph of these contracts deals with a thirty percent fee on the net proceeds received by the insurer and "the client is in agreement to pay [APA] for their services in the form of their 30% fee of the net proceeds." Respondents Exceptions at 8. This is contrary to the second paragraph of their own contracts that states that the fee is charged before deductions.

Accordingly, I concur with ALJ Sanders that the Department proved the allegations in Count Five of the OTSC in relation to the contracts marked DOBI-0036 through -0053, DOBI-

0055 through -0067 and DOBI-0069 through -0072, and therefore, I FIND that the Respondents' actions constitute violations of N.J.S.A 17:22B-13(c) (requiring that adjusters provide clients with "a written memorandum, signed by the party to be charged and by the adjuster, and specifying or clearly defining the services to be rendered and the amount or extent of the compensation. . . ."), N.J.A.C. 11:1-37.13(a) (requiring that a written contract or memorandum must specify or clearly define "the amount or extent of the compensation), and N.J.A.C. 11:1-37.13(b)(4) (requiring public adjuster contracts to confirm to the requirements of the Consumer Contracts Act, N.J.S.A. 56:12-1 to -101, which requires at N.J.S.A. 56:12-2, that consumer contracts be "written in a simple, clear, understandable and easily readable way"). I additionally concur with ALJ Sanders and FIND that the Respondents demonstrated untrustworthiness, in violation of N.J.S.A. 17:22B-14(a)(4) and N.J.A.C. 11:1-37.14(a)(4) (both allow the Commissioner to suspend or revoke a license if the Commissioner determines that a licensee has "demonstrated his or its, incompetency, lack of integrity, bad faith, dishonesty, financial irresponsibility, or untrustworthiness to act as an adjuster").

ALJ Sanders failed to make any findings regarding the contract marked as DOBI-0068. This appears to have been an oversight, as ALJ Sanders stated that thirty contracts contain the contradictory provisions described by the Department, but only specifically referenced twenty-nine contracts. PSD at 7. DOBI-0068 does contain the same contradictory provisions that ALJ Sanders found was violative of the Public Adjusters' Act and accompanying regulations in the contracts marked as DOBI-0036 through -0044, DOBI-0047 through -0048, DOBI-0050 through -0052, DOBI-0055 through -0057, DOBI-0059 through -0066, and DOBI 0069 through -0072. Specifically, the first paragraph of the contract provides that the Respondents' "fee is equal to 30% of the total insurance settlement proceeds paid to you by your insurance company" and the second

paragraph states that "[c]ommissions are deducted from "FULL SETTLEMENT AMOUNT** . . . before deductions are made, i.e. Depreciation (Non-Recoverable or Recoverable), Deductibles." As ALJ Sanders found that the other twenty-nine contracts that include this same language are contradictory and violative of certain provisions of the Public Adjusters' Act and regulations, I MODIFY the PSD and Initial Decision and FIND that the Department proved the allegations in Count Five of the OTSC in relation to the contract marked DOBI-0068 and therefore, I FIND that the Respondents actions also constitute violations of N.J.S.A 17:22B-13(c), N.J.A.C. 11:1-37.13(a) and N.J.A.C. 11:1-37.13(b)(4). I additionally FIND that the Respondents' actions in relation to this contract demonstrated untrustworthiness, in violation of N.J.S.A. 17:22B-14(a)(4) and N.J.A.C. 11:1-37.13(a)(4).

Further, although included by the Department in the table of contracts, attached to the Patel Cert. as Exhibit E, ALJ Sanders failed to reference the settlement statement provided by the Department in relation to client M.W. The Department did not provide a contact for M.W. However, a review of the record shows that the Respondents began using the contracts at issue in Count Five on or about October 30, 2013. The second paragraph advises insureds that the Respondents fee would be deducted from the full settlement amount before deductions for depreciation and deductibles. The Respondents would also charge a $250 fee per $1,500 for recoverables, The first contract provided that includes this language is the Respondents' contract with M.C., marked as DOBI-0053, and is dated October 30, 2013. Attached to the Patel Cert. at Exhibit C. The Respondents' other contract with M.C., DOBI-0054, which is the older version of the Respondents' contract with only one paragraph discussing the Respondents' fee, is dated October 23, 2013. The settlement statement for M.W., marked as DOBI-0160, is dated for March 31, 2014, and the date of loss is listed as February 24, 2014. Because the Respondents began using

the newer contract almost four months before they entered into a contract with M.W., it is reasonable to assume that the contract between the Respondents and M.W. sets forth the same contradictory language and based upon that contract, that the Respondents collected their fee based upon the gross settlement amount because doing so would provide a larger payment to the Respondents. Accordingly, I MODIFY the PSD and Initial Decision and FIND that the Department proved the allegations in Count Five of the OTSC in relation to their contract with M.W., discussed in settlement statement DOBI-0160, and therefore, I FIND that the Respondents actions also constitute violations of N.J.S.A 17:22B-13(c), N.J.A.C. 11:1-37.13(a), and N.J.A.C. 11:1-37.13(b)(4). I additionally FIND that the Respondents' actions in relation to this contract demonstrated untrustworthiness, in violation of N.J.S.A. 17:22B-14(a)(4) and N.J.A.C. 11:1-37.13(a)(4).

ALJ Sanders failed to make determinations regarding whether the Respondents' actions, as alleged in Count Five of the OTSC, constitute violations of N.J.S.A. 17:22B-14(a)(1) and N.J.A.C. 11:1-37.14(a)(1) (both permit the Commissioner to suspend or revoke a license if the licensee has violated any provision of the insurance law, including any rules promulgated thereunder); N.J.A.C. 11:1-37.14(a)(13) (permitting the Commissioner to suspend or revoke a license if the licensee "[h]as made any misrepresentation of facts or advised any person on questions of law in conjunction with business as a public adjuster"); and N.J.A.C. 11:1-37.14(a)(17) (permitting the Commissioner to suspend or revoke a license if the licensee [c]ommitted any other act, or omission which the Commissioner determines to be inappropriate conduct by a licensee of this State").

Here, ALJ Sanders and I have found that the Respondents entered into thirty-seven contracts with New Jersey insureds that contained inherently contradictory and confusing language

regarding the nature and extent of the compensation to which the Respondents were entitled. The Respondents' contracts specifically advised their clients that they would collect their fee calculated based on both the net and gross insurance settlement and then, the Respondents collected on the gross amount in order to collect a larger fee. The Respondents clearly misrepresented the nature and extent of the fee to their clients, which is inappropriate in the business of adjusting services, and as such, I MODIFY the PSD and FIND that the Respondents' actions, as alleged in Count Five of the OTSC, also constitute violations of N.J.A.C. 11:1-37.14(a)(13) and N.J.A.C. 11:1-37.14(a)(17). Moreover, because ALJ Sanders and I have found that the Respondents have violated specific provisions of the Public Adjusters' Act and accompanying regulations, I MODIFY the PSD and Initial Decision and FIND that the Respondents actions, as alleged in Count Five of the OTSC, additionally constitute violations of N.J.S.A. 17:22B-14(a)(1) and N.J.A.C. 11:1-37.14(a)(1).

Although I concur with ALJ's findings regarding the violations committed by the Respondents in relation to Count Five of the OTSC, a review of the fees charged by the Respondents through the settlement statements provided by the Department, and attached to the Patel Cert., show that some of the amounts found by ALJ Sanders are incorrect. Because ALJ Sanders only specified a lump sum overcharge, it is necessary to detail exactly how much the Respondents overcharged for each of their clients. Below is chart setting forth the bates stamp for the contract, the client's initials,[52] the bates stamp for the settlement statement, the total negotiated award, the total negotiated award minus the EMS fee (if the Respondents deducted it prior to

[52] There are three contracts that note that the client's initials are E.M., marked as DOBI-0063, DOBI-0064 and DOBI-0066. The contracts marked as DOBI-0063 and DOBI-0064 are the same client with the initials E.M. The contract marked as DOBI-0066 is a different client that happens to have the initials E.M.

calculating their fee),[53] the net award minus the deductible, depreciation, and EMS fee (if the Respondents did not deduct it prior to calculating their fee), the fee the Respondents actually charged their clients, the fee they should have charged based on the net award, the percentage that the Respondents actually charged their clients, and the difference between the fee the Respondents charged and the fee that they should have charged on the net award.

Contract Bates No.	**Client Name**	**SS Bates No.**	**Total Negotiated Award**	**Total Negotiated Amount Minus EMS Fee (if deducted by Respondents)**	**Net award (minus deductible, depreciation, and EMS fee (if not deducted by Respondents)**	**Fee Actually Charged**	**Fee on Net award**	**% Charged**	**Difference**
0036	**E.L.**	**0101**	**$8,879.99**	**$5,762.27**	**$4,4842.47**	**$1,728.69**	**$1,452.74**	**36%**	**$275.95**
0037	**E.L.**	**0099**	**$8,698.29**	**$6,139.96**	**$5,312.10**	**$1,841.99**	**$1593.63**	**35%**	**$248.36**
0038	**R.T.**	**0113**	**$4,782.77**		**$2,806.59**	**$1,434.83**	**$841.98**	**51%**	**$592.85**
0039	**C.I.**	**0109**	**$22,775.56**		**$13,617.74**	**$6,832.67**	**$4,085.32**	**50%**	**$2,747.35**
0040	**C.I.**	**0107**	**$18,818.62**		**$11,823.17**	**$5,645.59**	**$3,546.95**	**48%**	**$2,098.64**
0041	**J.G.**	**0095**	**$18,591.32**	**$12,779.35**	**$10,620.04**	**$3,833.81**	**$3,186.01**	**36%**	**$647.80**
0042	**J.G.**	**0093**	**$10,753.45**	**$5,488.52**	**$4,009.08**	**$1,646.56**	**$1,202.72**	**41%**	**$443.84**
0043	**L.M.**	**0090**	**$21,983.75**		**$15,320.40**	**$6,595.13**	**$4,596.12**	**43%**	**$1,999.01**
0044	**L.S.**	**0168**	**$4,891.91**		**$4,015.92**	**$1,467.58**	**$1,204.78**	**37%**	**$262.80**
0045	**L.S.**	**0170**	**$1,468.14**		**$1,218,14**	**$440.45**	**$365.44**	**36%**	**$75.01**
0046	**A.S.**	**0174**	**$4,640.80**	**$3,114.26**	**$2,450.11**	**$934.28**	**$735.03**	**38%**	**$199.25**
0047	**W.F.**	**0182**	**$3,545.00**		**$2,758.72**	**$1,063.50**	**$827.62**	**39%**	**$253.88**
0048	**L.W.**	**0103**	**$6,315.66**		**$3,676.30**	**$1,894.70**	**$1,102.89**	**52%**	**$791.81**
0049	**L.W.**	**0105**	**$4,091.66**	**$2,742.02**	**$1,484.25**	**$822.61**	**$445.28**	**55%**	**$377.33**
0050	**L.H.**	**0143**	**$7,211.18**		**$3,885.71**	**$2,163.36**	**$997.65**	**56%**	**$997.65**
0051	**L.H.**	**0141**	**$8,356.56**		**$5,867.52**	**$2,506.97**	**$1,760.26**	**43%**	**$746.71**
0052	**S.G.**	**0139**	**$7,615.39**		**$3,510.83**	**$2,284.62**	**$1,053.25**	**65%**	**$1,231.37**
0053	**M.C.**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**
0055	**R.F.**	**0115**	**$14,286.54**		**$10,736.26**	**$4,285.97**	**$3,220.88**	**40%**	**$1,065.09**
0055 (Supplemental Claim)	**R.F.**	**0117**	**$3,050.28**		**$3,050.28**	**$500**	**$915.08**		**-$415.08**
0056 & 0057	**B.R.**	**0125**	**$58,660.56**		**48,787.75**	**$17,598.17**	**$14,636.33**	**36%**	**$2,961.84**

[53] On some settlement statements, the Respondents deducted the EMS Advanced Restoration fee prior to calculating their fee, and on other settlement statements, the Respondents collected their fee prior to subtracting the EMS fee. The EMS fee is not an amount paid to the insured and, like the deductible and depreciation, should be deducted from the gross award to the client prior to the adjuster taking his or her fee. If there is a number in this column, it means that the Respondents did properly subtract the EMS fee prior to calculating their fee that is listed in the column that sets forth the amount the Respondents actually charged their clients. It is noted, however, that not all claims had an EMS Advanced Restoration fee.

0058	C.L.	0097	$7,821.93		$4,776.32	$2,346.58	$1,432.90	49%	$913.68
0059	A.C.	0151	$38,536.10	$31,468.81	$26,704.43	$9,440.65	$8,011.33	35%	$1,429.32
0060	H.E.	0152	$7,812.56	$3,413.17	$707.68	$707.68	$212.30	100%	$495.38
0061	H.E.	0152	$13,143.17	$8,402.25	$5,177.32	$2,520.68	$1,553.20	49%	$967.48
0062	P.N.	0158	$10,141.82		$6,820.59	$3,042.55	$2.046.18	45%	$996.37
0063	E.M.	0162	$2,552.13		$1,623.62	$765.64	$487.09	47%	$278.55
0064	E.M.	0164	$1,598.57			$479.57	$317.39	45%	$162.18
0065	B.N.	0166	$5,170.95		$3,653.95	$1,551.29	$1,096.19	42%	$455.10
0066	E.M.	0186	$2,121.47		$1,621.47	$636.45	$486.44	39%	$150.01
0067	B.L.	0176	$4,235.21	$1,236.00	$761.77	$520.00	$228.53	68%	$291.47
0068	G.L.	0178	$10,264.43		$5,766.79	$3,079.33	$1,730.04	54%	$1,349.29
0069	G.L.	0180	$3,987.35		$1,657.73	$1,196.21	$497.32	72%	$698.92
0070	T.R.	0184	$15,256.08		$11,846.95	$5,026.09	$3,554.09	42%	$1,472.73
0071	G.B.	0188	$5,516.06		$3,630.59	$1,654.82	$1,089.18	46%	$565.64
0072	E.B.	0190	$7,629.84		$6,031.09	$2,288.96	$1,809.33	38%	$479.63
N/A	M.W.	0160	$16,741.66		$11,475.99	$4,941.50	$3,442.80	43%	$1,498.70
							Total Difference:		$29,805.91

Based upon the calculations above, the total difference between the amount charged by the Respondents and the amount the Respondents should have charged related to the thirty-six[54] contracts and are at issue in Count Five that have settlement statements associated with them, is $29,805.91,[55] not the $26,387.36 difference found by ALJ Sanders. Accordingly, I MODIFY the PSD and Initial Decision accordingly.

I additionally note that ALJ Sanders concluded that the Department failed to prove that the Respondents' contract with M.C., marked as DOBI-0054, was contradictory. I concur with this finding. However, as noted above, the contract marked as DOBI-0054 was an older version of the

[54] The contract with M.C., marked as DOBI-0053, does not have a settlement statement associated with it. Therefore, it is not included in the total overcharge amount.

[55] For client R.F., there were two settlement statements, marked as DOBI-0115 and DOBI-0117. DOBI-0115 is the main settlement statement. DOBI-0117 is a supplemental settlement statement for recovered depreciation in the amount of $3,050.28, for which Respondents already claimed a thirty percent fee. On DOBI-0117, the Respondents collected an additional $500 "administrative fee" on top of the same monies they previously collected a fee under DOBI-0115. If the Respondents had not already collected a fee for this depreciation amount, they would have been entitled to collect their thirty percent fee on this amount at the time it was paid by the insurance company or the $500 administrative fee, but not both. They are not entitled to collect two separate fees on the same monies received. The calculation above gives credit to the Respondents for the greater of these two fees in the amount of $915.08, $415.08 more than they actually collected. Therefore, the total amount overcharged for R.F. was $650.01, arrived at by subtracting $915.08 from the $1,065.09 fee they should have received in DOBI-0115.

Respondents' contract and it did not contain contradictory provisions as set forth in the other contracts discussed in Count Five of the OTSC. Pursuant to my analysis for Count Four of the OTSC above, the contract with M.C. marked as DOBI-0054, should have been included under Count Four of the OTSC rather than Count Five. Therefore, I amended the OTSC, and modified the PSD and Initial Decision accordingly. I did not discuss or include this contract in the above discussions related to the thirty-six other contracts at issue in Count Five of the OTSC.

Count Six

Count Six of the OTSC alleges that between December 2012 and July 2014, the Respondent APA, through the Respondent Bellamy, entered into at least thirty-seven public adjuster contracts with New Jersey insureds wherein the Respondents' fee structure for public adjuster services provided the potential for the Respondents to collect more than the amount ultimately secured by the insureds, the Respondents collected two separate fees for recoverable depreciation, and the fee structure was not reasonably related to the services rendered, in violation of N.J.S A. 17:22B-13(c); N.J.S.A. 17:22B-14(a)(1) and (4); N.J.A.C. 11:1-37.13(b)(3)(ii); and N.J.A.C. 11:1-37.14(a)(1), (4), and (17). ALJ Gertsman found that the Respondents, in thirty-eight instances, collected a fee in a percentage higher than that set forth in their own contracts with the insureds by collecting their fee on monies that were not paid to the insureds by the insurance company at the time the Respondents collected the fee. Initial Decision at 11. Specifically, ALJ Gertsman found that the Respondents, in thirty-two instances, collected more than thirty percent of the total insurance settlement proceeds paid to the insured and in another six instances, the Respondents collected a larger monetary amount than the client received from their insurance company. Ibid. Accordingly, ALJ Gertsman found that the fee structure utilized by the Respondents was unreasonable. Ibid. ALJ Gertsman additionally found that the Respondents'

contracts also provided for an administrative fee of $250 per $1,500 to recover recoverables from the insurance company. Ibid. ALJ Gertsman found that the Respondents collecting fees based upon funds not paid to the insureds is in violation of the Public Adjusters' Act and regulations because the Respondents' fee was not reasonably related to the services rendered. Ibid.

While I concur with ALJ Gertsman that the fee structure used by the Respondents is unreasonable and not reasonably related to the services rendered, there was some confusion regarding which contracts should be at issue in Count Six of the OTSC. ALJ Gertsman found as fact that at least thirty-seven contracts contained language in paragraph one that the insureds agreed to pay APA a fee for its services in a percentage of the total insurance settlement proceeds paid to the insured by the insured's insurance company and that amount was due and payable from each insurance check or draft in the percentage listed in that paragraph. Initial Decision at 3. Moreover, ALJ Gertsman found that the second paragraph of the same thirty-seven contracts stated that commissions are deducted from the "FULL SETTLEMENT AMOUNT," and provided that the full settlement amount is based upon "Dwelling, Contents and Additional Living Expenses and is defined as total 'Negotiated Award' before deductions are made i.e. Depreciation (Non-Recoverable or Recoverable), Deductibles." Id. at 4. ALJ Gertsman additionally found that, in another instance with client M.W., the Respondents collected a fee on the gross amount settlement, rather than on the net amount. Id. at 8. As noted in my analysis of Count Five above, the contract with M.W. was not entered as part of the record; however, the settlement statement, showing the fee charged by the Respondents was entered as DOBI-0160. While I concur that the contracts at issue in Counts Five and Six of the OTSC contain these provisions,[56] ALJ Sanders found that only

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[56] As noted by ALJ Sanders and I in relation to Count Five of the OTSC, not all of the contracts contained the exact same language. The referenced contracts do contain conflicting provisions in the first and second paragraph. However, only twenty-nine of the thirty-seven referenced specify

thirty-five of the thirty-seven contracts contain these provisions. PSD at 7-8. Additionally, in my analysis of Count Five above, I found that an additional contract contains these provisions, which was inadvertently left out of ALJ Sanders's analysis and another settlement statement for M.W. (DOBI-0160) that was included by the Department in their Exhibits to the Patel Cert. should also be included as one of the thirty-seven contracts. However, it appears that ALJ Gertsman referenced contracts that were outside of the contracts discussed and found to be violative under Count Five of the OTSC above.

The Department included in its Motion for Summary Decision on Count Six the contracts for O.F. (DOBI-0010), G.D. (DOBI-0011), T.S. (DOBI-0012), and M.C. (DOBI-0054) that are the subject of Count Four of the OTSC,[57] as these contracts are the older version of the Respondents' contracts and only contain one provision related to the Respondents' fee.

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only the language included by the Department in their Motions for Summary Decision. Three additional contracts contain this language but also include another line in the first paragraph that states, "If the fee is discounted for multiple claims at one time and the additional claim is denied the fee reverts back to 30%." The final four contracts provide, in the second paragraph, that the commissions are deducted from the "RCV 'Replacement Cost Value,' which is also known as the 'FULL SETTLEMENT AMOUNT' or 'TOTAL NEGOITATED [sic] AWARD**. ** 'Replacement Cost Value' is the (GROSS AWARD) and is based on: Dwelling, Contents, Electrical, Plumbing, and Additional Living Expenses <u>before</u> deductions are made, i.e., Depreciation (No-Recoverable or Recoverables) and/or Deductible." It should also be referenced that all of the contracts contain a provision in the first paragraph wherein the Respondents would collect an additional "fee for a supplemental claim [in the amount of] 50% of the supplement awarded (A supplement claim is defined as a claim whereas the homeowner has previously received payment from the insurance company on the claim listed above)." Additionally, as noted by both ALJs, all of the contracts in the second paragraph include a provision allowing the Respondents to collect a $250 per $1,500 "Administrative Fee" to recover recoverables from the insurance company.

[57] It is noted that the contract with M.C. was, originally one of the thirty-seven contracts discussed in Count Five of the OTSC, but as noted in my analysis for Count Five above, this contract, DOBI-0054, did not contain the conflicting provisions at issue in Counts Five and Counts Six, and should have been discussed in Count Four of the OTSC, as there is only one provision in the contract that relates to the fee. As I have amended the OTSC to include DOBI-0054 in Count Four, it should not be included in the analysis for the violations contained in Count Five or Six.

Specifically, these contracts state that the Respondents' fee will be collected from "the total insurance settlement proceeds paid" to the insured by the insurance company, or the net amount. These contracts did not contain the second paragraph provisions, referenced above, that provide that (1) the fee is charged on the full settlement amount before deductions and (2) the Respondents are also entitled to a $250 per $1,500 "administrative fee" to recover recoverables from the insurance company.

While the Respondents collected a fee of more than twenty-five or thirty percent for these four clients specified in their contracts, these older contracts only permitted the Respondents to collect a fee based upon the amount actually paid to the insureds from their insurance companies, which would not include the deductible or unpaid depreciation amounts. The Respondents, in these four instances, did not abide by the terms of their own contracts, as set forth in the analysis for Count Four above.

In the thirty-seven contracts at issue in Counts Five and Six, the Respondents drafted a fee structure where, in the first paragraph of the contract, the Respondents were to collect their fee on the net insurance payment, and then in the second paragraph, were permitted to collect on the gross insurance payment while also collecting an additional "administrative fee" to recover the same monies on which they previously collected a percentage, but at the time they collected that percentage, the monies were not actually paid to the insured. Because of this, the Respondents collected a higher fee than was reasonable for the services rendered. This is the fee structure at issue in both Counts Five and Counts Six of the OTSC. The Respondents not adhering to their contractual terms in their own contracts with O.F. (DOBI-0010), G.D. (DOBI-0011), T.S. (DOBI-0012), and M.C. (DOBI-0054) are not at issue in Counts Five or Six of the OTSC. Accordingly, I MODIFY the Initial Decision and find that the contracts for O.F. (DOBI-0010), G.D. (DOBI-

0011), T.S. (DOBI-0012), and M.C. (DOBI-0054) should not have been included in the analysis of Count Six of the OTSC. However, as more fully discussed below, the Respondents' collection of the $250 administrative fee for O.F. under the settlement statement marked as DOBI-0203 is a specific violation that was alleged in Count Six of the OTSC and was appropriately discussed by ALJ Gertman in relation to this Count. Initial Decision at 11.

In addition, ALJ Gertsman found that there were two contracts for client G.B. Ibid. However, there was only one contract for this client, marked as DOBI-0071. While the settlement statement in this matter, marked as DOBI-0188, splits the award into "Dwelling" and "Contents," the payments were based upon one contract, with one date of loss. It is unclear why the Department and ALJ Gertsman referenced this contract as two separate contracts. Accordingly, I MODIFY the Initial Decision to include only one contract in relation to G.B. (DOBI-0071).

Additionally, ALJ Gertsman only references one contract for client H.E. Id. at 7. However, there are actually two contracts for this client, marked as DOBI-0060 and DOBI-0061. The contract referenced by ALJ Gertsman is DOBI-0061. Ibid. Under the contract marked as DOBI-0060, for damage to the roof and windows, the Respondents charged a fee of one-hundred percent of the total amount paid by the insurance company to the insured. See DOBI-0152 attached to the Patel Cert. at Exhibit C. Therefore, H.E. received no insurance payout on the claim relating to roof damage.[58] Accordingly, I MODIFY the Initial Decision to include DOBI-0060 in relation to Count Six of the OTSC.

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[58] ALJ Gertsman states that there is a contract with H.E. where the percentage charged by Respondents on the total paid by the insurance company was 49 percent. Initial Decision at 7. ALJ Gertsman cites to the settlement statement at DOBI-0152, and not to the contract at DOBI-0061. DOBI-0061 relates to a loss due to a "pipe leak" that occurred on or about March 3, 2014. The first contract for H.E., at DOBI-0060 relates to damage to H.E.'s roof and windows due to wind, ice, and snow and occurred on or about February 28, 2014. The settlement statement at DOBI-0152 relates to a "roof claim" and a "kitchen claim." After APA's fee, EMS Advanced

There were also two contracts for client B.R., and it appears that ALJ Gertsman combined these two contracts because the contracts share a "Final Disbursement Statement." Specifically, DOBI-0056 is a contract for B.R. related to a "kitchen sink leak" that occurred on or about March 8, 2014. DOBI-0057 is a contract for B.R. related to a "supply line leak mst. bth" that occurred on or about February 25, 2014. The Department provided multiple settlement statements in relation to these two contracts. Specifically, DOBI-0119, dated July 9, 2014, for the loss occurring under DOBI-0057; DOBI-0121, dated June 9, 2014, for the loss occurring under DOBI-0057; DOBI-0123, dated July 7, 2014, for the loss occurring under DOBI-0057; DOBI-0125, dated August 13, 2014, for both losses under DOBI-0056 and DOBI-0057; DOBI-0128, dated April 23, 2014, for the loss occurring under DOBI-0056; DOBI-0130, dated June 9, 2014, for the loss occurring under DOBI-0057; and DOBI-0132, dated "REVISED" July 30, 2014, for both losses under DOBI-0056 and DOBI-0057. It appears that in order to make these disbursements easier to understand and digest, the Department linked the two contracts for B.R. to only the "Final Disbursement Statement," which is marked as DOBI-0125. This Final Disbursement Statement included the total negotiated award for both claims, which included depreciation that was not yet recovered for the "bathroom," "kitchen," "contents," and "piano." This Final Disbursement Statement included a list of all of the checks paid by the insurance company and their dates, as well as marking that the deductible was $1,000 for each claim, totaling $2,000. A review of all of the settlement statements provided for B.R. and the Final Disbursement Statement (DOBI-0125) shows that the Respondents did collect their thirty percent fee for both contracts, DOBI-0056 and

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Restoration's fee, depreciation, and deductible were taken out, H.E. did not receive any payout from the roof claim. H.E. received $2,656.64 from the kitchen claim, after APA's fee, EMS Advanced Restoration's fee, depreciation, and deductible were taken out. ALJ Gertsman did not address DOBI-0060, related to the roof claim for which H.E. did not receive any payout.

DOBI-0057, off of the gross amount before deductions were made for both the deductible and depreciation amounts. Based upon these two contracts, the Respondents collected a total percentage of thirty-six percent of the net insurance payment to B.R., as referenced by ALJ Gertsman in his analysis. Initial Decision at 7, 11. Accordingly, I MODIFY the Initial Decision to clarify that there are two contracts, DOBI-0056 and DOBI-0057 related to client B.R. at issue in Count Six of the OTSC.

There is one contract with B.L., marked as DOBI-0067, that was included in Count Five of the OTSC, which should have been included in Count Six as well. It is unclear why this contract was not included. This contract includes the same contradictory language discussed in this Count and the Respondents collected the fee based upon the gross amount, including deductible and unpaid depreciation. See DOBI-0176 attached at Exhibit C to the Patel Cert. Accordingly, the contract with B.L. should have also been included in the analysis for Count Six of the OTSC. Accordingly, I MODIFY the Initial Decision to include the Respondents' contract with B.L, marked as DOBI-0176 in relation to Count Six of the OTSC.

Based upon the above modifications, the following thirty-seven instances are at issue in relation to Count Six of the OTSC:

Contract Bates No.	Client Name	% Charged
0036	**E.L.**	**36%**
0037	**E.L.**	**35%**
0038	**R.T.**	**51%**
0039	**C.I.**	**50%**
0040	**C.I.**	**48%**
0041	**J.G.**	**36%**
0042	**J.G.**	**41%**
0043	**L.M.**	**43%**
0044	**L.S.**	**37%**
0045	**L.S.**	**36%**
0046	**A.S.**	**38%**

0047	**W.F.**	**39%**
0048	**L.W.**	**52%**
0049	**L.W.**	**55%**
0050	**L.H.**	**56%**
0051	**L.H.**	**43%**
0052	**S.G.**	**65%**
0053	**M.C.**	**N/A**
0055	**R.F.**	**40%**
0056 & 0057	**B.R.**	**36%**
0058	**C.L.**	**49%**
0059	**A.C.**	**35%**
0060	**H.E.**	**100%**
0061	**H.E.**	**49%**
0062	**P.N.**	**45%**
0063	**E.M.**	**47%**
0064	**E.M.**	**45%**
0065	**B.N.**	**42%**
0066	**E.M.**	**39%**
0067	**B.L.**	**68%**
0068	**G.L.**	**54%**
0069	**G.L.**	**72%**
0070	**T.R.**	**42%**
0071	**G.B.**	**46%**
0072	**E.B.**	**38%**
N/A	**M.W.**	**43%**

The above chart additionally shows the percentages charged by the Respondents for each of the contracts. The calculation for these percentages can be found under my analysis for Count Five above. Accordingly, on ten of the above-referenced thirty-seven contracts (DOBI-0038, DOBI-0039, DOBI-0048, DOBI-0049, DOBI-0050, DOBI-0052, DOBI-0060, DOBI-0067, DOBI-0068, and DOBI-0069) the Respondents charged a fee in excess of the amount ultimately secured by their own clients. In the remaining twenty-seven instances, the Respondents charged a fee that exceeded thirty percent of the total insurance settlement proceeds paid to the insured, in

contravention of the Respondents' contracts with the insureds who hired the Respondents. Accordingly, I MODIFY the Initial Decision to reflect same.

The Respondents argue in their Exceptions that there is no proof that the clients at issue did not collect the recoverable depreciation at some point. Respondent Exceptions at 8. However, there is also nothing in the record to support that the clients did collect it. It is clear that at the time the Respondents charged their fee, the clients had not received any monies related to the depreciation and deductibles withheld by the insurance company. Thus, the Respondents charged and collected a fee on monies that they did not yet recover for their clients. Accordingly, I concur with ALJ Gertsman that "[t]here can be no doubt that collecting fees based upon funds not paid to the insureds is a clear violation." Initial Decision at 11. Moreover, I concur with ALJ Gertsman in his conclusion that the Respondents' fee structure, as set forth in the contracts at issue in Counts Five and Six of the OTSC, that contain the contradictory provisions, is unreasonable. Based upon the provisions in those contracts, the Respondents collected fees that exceeded or almost equaled the amount that their clients ultimately received from the insurance company. There can be no doubt that a public adjuster receiving a larger or almost equal payout on a loss that an insured endured is completely unreasonable and cannot be reasonably related to the services rendered to the insured. Although I modified the Initial Decision with respect to some of the contracts referenced by ALJ Gertsman in his analysis, the conclusions made by him in the Initial Decision in relation to the contracts he discussed relate equally to every contract and instance set forth in the chart above. Accordingly, I concur with ALJ Gertsman that the Department proved the allegations in Count Six of the OTSC, and therefore, I FIND that the Respondents actions, in relation to the thirty-seven instances set forth in the chart above, constitute violations of N.J.A.C. 11:1-37.13(b)(3)(ii) (requiring that a written memorandum or contract between an insured and

public adjuster contain "[a] list of services to be rendered and the maximum fees to be charged, which fees shall be reasonably related to services rendered"). I additionally concur with ALJ Gertsman and FIND that the Respondents demonstrated untrustworthiness, in violation of N.J.S.A. 17:22B-14(a)(4) and N.J.A.C. 11:1-37.13(a)(4) (both allow the Commissioner to suspend or revoke a license if the Commissioner determines that a licensee has "demonstrated his or its, incompetency, lack of integrity, bad faith, dishonesty, financial irresponsibility, or untrustworthiness to act as an adjuster"), and are therefore in violation of N.J.S.A. 17:22B-14(a)(1) and N.J.A.C. 11:1-37.14(a) (both allow the Commissioner to suspend or revoke a license if the Commissioner determines that a licensee had violated any provision of the insurance law, including any rules promulgated thereunder).

In addition to the above contracts, Count Six of the OTSC alleges that the Respondents, on May 10, 2013, charged O.F. a $250 administrative fee to recover $1,266.28 worth of recoverable depreciation, even though the insured had already been charged a thirty percent adjuster fee based on the total negotiated award, before recoverable depreciation had been deducted. Because of this, the Respondents collected two separate fees on the same monies. ALJ Gertsman analyzed this allegation in the Initial Decision and found this as fact. Initial Decision at 11. Although I modified the Initial Decision to exclude ALJ Gertsman's inclusion of the Respondents' contract with O.F. (DOBI-0010), as that is the subject of Count Four of the OTSC, the Respondents' second fee on the recoverable depreciation, as set forth on the settlement statement marked as DOBI-0203, was a specific allegation of Count Six and it should remain under this Count. It should also be noted that although the contracts contained in the chart above all included in their contracts that the Respondents would collect a $250 fee per $1,500 to recover recoverables, the Respondents' contract with O.F. (DOBI-0010) did not contain that provision. Therefore, the Respondents

collected a fee that was not set forth in the contract with O.F. The Respondents, by setting up a fee structure that allowed them to collect a fee of $250 per $1,500 to collect recoverables, allowed themselves to collect on the same monies at least twice. It is inconsistent with the rules for the Respondents to charge more than once for the same rendered service, that is collecting the recoverable depreciation amount. In light of the foregoing, I MODIFY the Initial Decision and FIND that the Respondents' actions in collecting a second fee on the same recoverable depreciation for O.F. as set forth in Count Six of the OTSC, is an additional violation of N.J.A.C. 11:1-37.13(b)(3)(ii). Further, I MODIFY the Initial Decision and FIND that the Respondents actions demonstrate untrustworthiness, incompetency, lack of integrity, bad faith, and dishonesty, in violation of N.J.S.A. 17:22B-14(a)(4) and N.J.A.C. 11:1-37.13(a)(4) and accordingly are also violations of N.J.S.A. 17:22B-14(a)(1) and N.J.A.C. 11:1-37.14(a).

Additionally, the Respondents' contract with R.F. was discussed by ALJ Gertsman in relation to Count Six of the OTSC. Initial Decision at 7, 11. However, ALJ Gertsman failed to discuss that, as in the case of O.F., the Respondents collected a $500 fee to recover $3,050.28 in recoverable depreciation for which the Respondents already charged a thirty percent fee on under settlement statement DOBI-0115. Therefore, like O.F., the Respondents charged R.F. twice for the same monies. As previously discussed, 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." Here, the Respondents were already put on notice that its contract with R.F. was the subject of Counts Five and Six of the OTSC and that the Respondents charging an "administration fee" on top of their thirty percent fee for the same service was an allegation contained in Count Six of the OTSC.

Moreover, the Respondents had an opportunity to dispute the documentation provided by the Department in supporting its allegations. As already noted, the Respondents' arguments related to its fee structure have been determined to be without merit and ALJ Gertsman has already found that the Respondents collecting two fees on the same amounts was unreasonable. Therefore, in the interests of efficiency, expediency, and the avoidance of over-technical pleading requirements, and since this amendment of the pleadings would not unduly prejudice the Respondents, I AMEND the OTSC to include the Respondents additional charge on recoverable deprecation under their contract with R.F. in the violations contained in Count Six of the OTSC. In light of the foregoing, I MODIFY the Initial Decision and FIND that the Respondents actions in collecting a second fee on the same recoverable depreciation for R.F., is an additional violation of N.J.A.C. 11:1-37.13(b)(3)(ii). Further, I MODIFY the Initial Decision and FIND that the Respondents actions demonstrate untrustworthiness, incompetency, lack of integrity, bad faith, and dishonesty, in violation of N.J.S.A. 17:22B-14(a)(4) and N.J.A.C. 11:1-37.13(a)(4) and accordingly are also violations of N.J.S.A. 17:22B-14(a)(1) and N.J.A.C. 11:1-37.14(a).

ALJ Gertsman failed to make determinations regarding whether the Respondents' actions, as alleged in Count Six of the OTSC, constitute violations of N.J.S.A. 17:22B-13(c) (prohibiting a public adjuster from having a right to compensation unless the right to compensation is based upon a written memorandum or contract and specifying or clearly defining the services to be rendered and the amount or extend of compensation), and N.J.A.C. 11:1-37.14(a)(17) (allowing the Commissioner to suspend or revoke a license if the Commissioner determines that a licensee committed any other act or omission that the Commissioner determines to be inappropriate conduct by the licensee).

As set forth above, the contracts at issue in this matter contain contradictory provisions that failed to appropriately explain to an insured the compensation that the Respondents were entitled to collect. Because of their contracts, the Respondents were able to collect a greater fee by collecting on unpaid amounts, i.e. deductibles and depreciation. Based upon the terms of their contracts, the insureds were unable to be appropriately informed of the nature and extend of the Respondents' compensation. Moreover, the Respondents, in the case of O.F., collected an administration fee that was not included in their contract with O.F. The Respondents' actions in creating a fee structure in their contracts that allowed them to collect a fee on money not actually paid and then collecting a second fee for the same money when it was paid, is inappropriate conduct to display in the business of public adjusting. Accordingly, I MODIFY the Initial Decision and FIND that the Respondents' actions, as set forth in Count Six of the OTSC, and amended above, additionally constitute violations of N.J.S.A. 17:22B-13(c) and N.J.A.C. 11:1-37.14(a)(17).

PENALTY AGAINST THE RESPONDENTS

Revocation of the Respondents' Public Adjuster Licenses

With respect to the appropriate action to take against the Respondents' public adjuster licenses, I find that the record is more than sufficient to support license revocation and, in fact, compels the revocation of the public adjuster licenses in this State. As such, I ADOPT ALJ Gertsman's recommendation that the both APA and Bellamy's public adjuster licenses be revoked.

The Commissioner is charged with the duty to protect the public welfare and to instill public confidence in the insurance industry as a whole. Commissioner v. Fonseca, OAL Dkt. No. BKI 11979-10, Initial Decision (08/15/11), Final Decision and Order (12/28/11) (citing In re Parkwood, 98 N.J. Super. 263 (App. Div. 1967)). Courts have long recognized that the insurance industry is strongly affected with a 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). Accordingly, the public's confidence in a licensee's honesty, trustworthiness, and integrity are of paramount concern. The Respondents, although not insurance producers, are licensed public adjusters who act under a duty of care and in a fiduciary capacity with respect to their client insureds. "A public adjuster's fiduciary obligation is bound to the highest degree of fidelity and good faith." Commissioner v. Nicolo, OAL Dkt. No. BKI 10722-04, Initial Decision (05/32/206), Final Decision and Order (10/12/06). The very essence of a public adjuster's responsibilities is to aid an insured in negotiating and effecting the settlement of loss damage claims. See N.J.S.A. 17:22B-2 (defining "public adjuster" to mean "any individual, firm, association, or corporation who, or which, for money, commission or any other thing of value, acts or aids in any manner on behalf of an insured in negotiating for, or effecting, the settlement of claims for loss or damage caused by or resulting from any accident, incident, or occurrence covered under a property insurance policy. . . ."). It is the public adjuster's responsibility to honestly perform his or her job.

In the present matter, the Respondents' priority in representing their clients was their own financial self-interest, rather than in their appropriately effecting an insurance settlement for their clients. As found by the ALJs and adopted in this Final Decision and Order, the Respondents entered into contracts with insureds when Respondent APA was not yet licensed, solicited contracts with insureds within the prohibited timeframe, failed to include appropriate cancellation language in their contracts, collected fees above those set forth in their contracts with insureds, collected fees on monies that were not even received from the insurance company at the time the fee was collected, and collected additional fees on the same monies a fee was previously collected on by claiming it to be an "administrative fee." Public adjusters interact with consumers during a

stressful time in the consumers' lives, where they are seeking someone to advocate for them in order to replace or repair their property that was damaged. The Respondents' clients contracted with public adjusters that worried more about their bottom line than the insureds that entrusted their claims to them. A few of the Respondents' clients at issue in this matter had claims related to Superstorm Sandy, one of the deadliest, most powerful, and most destructive storms to touch down in this State. The Respondents clearly took advantage of these insureds, as well as all of the other insureds mentioned in this matter. For these reasons and based upon my review of the record, the PSD, and the Initial Decision, and the violations that I have found that the Respondents committed, I ADOPT ALJ Gertsman's recommendation and ORDER the revocation of both APA and Bellamy's public adjuster licenses.

Monetary Penalties Against the Respondents

The Commissioner may levy penalties against any person violating the Public Adjusters' Act, not exceeding $2,500 for the first offense and not exceeding $5,000 for each subsequent offense. N.J.S.A. 17:22B-17. As noted by the ALJs, pursuant to Kimmelman, certain factors are to be examined when assessing administrative monetary penalties such as those that may be imposed under the Public Adjusters' Act. These factors are: (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; and (7) past violations. Kimmelman, 108 N.J. at 137-39. No one Kimmelman factor is dispositive for or against fines and penalties. See Kimmelman, 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").

The first Kimmelman factor addresses the good faith or bad faith of the respondent. I concur with ALJ Sanders and FIND that the Respondents' bad faith was evidenced by the Respondents: (1) contracting with insureds prior to the time APA was licensed; (2) soliciting clients in violation of the time requirements that were mandated by statute in an attempt to secure business during a time that an insured may not be making decisions clearly; (3) misleading insureds as to their right to cancel their contract at any time; (4) charging fees that were not in accordance with the contractual language; and (5) using payment language that has contradictory payment terms. In addition, I concur with ALJ Gertsman and FIND that the Respondents demonstrated bad faith by utilizing a fee structure that allowed the Respondents to recover significantly higher payments than fees based upon the net amount paid to the insureds. Moreover, the Respondents demonstrated bad faith by collecting a fee in excess of the amount that the insureds received from the insurance company on at least ten separate contracts and by collecting a fee higher than the percentage specified in the contracts in twenty-seven additional instances. An analysis of this factor thus supports the imposition of significant monetary penalties.

The second Kimmelman factor is the ability of the respondent to pay the penalties imposed. Although the ALJs stated that the Respondents have provided no evidence in relation to their ability or inability pay a civil penalty, the Respondents stated in their Motion for Reconsideration of the PSD that the penalty is severe enough to bankrupt the Respondents. Respondents who claim an inability to pay civil penalties bear the burden of proving their incapacity. Commissioner v. Shah, OAL Dkt. No. BKI 11903-05, Initial Decision (04/15/08), Final Decision and Order (09/02/08). Other than mentioning that the civil penalty would bankrupt the Respondents, the Respondents failed to produce any evidence to support this contention. In addition, the Respondents profited by overcharging clients in excess of $30,000. I concur with the ALJs and

ADOPT the ALJs' findings that this factor favors the imposition of a larger monetary penalty against both Respondents, as the Respondents failed to introduce specific evidence regarding their ability to pay the recommended penalties.

The third Kimmelman factor relates to the profits obtained. 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, 108 N.J. at 138. In addition to the Respondents entering into contracts and collecting fees prior to APA being licensed and during the statutory "no contracting" timeframe, the Respondents specifically overcharged their clients referenced in Counts Four of the OTSC by $4,006.69 and their clients referenced in Counts Five and Six of the OTSC by $29,805.91. In total, the Respondents profited from overcharging their clients in the amount of $33,812.60. An analysis of this factor thus supports the imposition of significant monetary penalties.

The fourth factor in Kimmelman examines the resulting injury to the public. As previously noted, the Commissioner is charged with the duty to protect the public welfare and to instill public confidence in the insurance industry. The ALJs found injury to the public in the instant matter through the specific insureds with whom the Respondents contracted and were subsequently overcharged for their services. The ALJs also found that the Department demonstrated injury to the public through the generalized harm of disregarding trust in the business of public adjustment services and through the Respondents' disregard of important safeguards and protections for consumers. I concur with the ALJ and ADOPT the ALJ's findings that the need to maintain faith in the business of public adjusting weighs in favor of imposing a significant monetary penalty.

Regarding the fifth Kimmelman factor, the duration of illegal activity, I concur with the ALJs and find that the Respondents engaged in the violative behavior for a period of approximately

twenty months, from December 2012 through July 2014. An analysis of this factor thus supports the imposition of significant monetary penalties.

The sixth factor contemplated in Kimmelman is the existence of criminal actions and whether a civil penalty may be unduly punitive if other sanctions have been imposed. I agree with the ALJs' conclusion and FIND the Respondents have not been charged with any criminal charges and the only penalty contemplated derives from this action. The New Jersey Supreme Court in Kimmelman, 108 N.J. at 128, stated that a lack of criminal punishment weighs in favor of a larger civil penalty. This factor weighs in favor of significant monetary penalties.

The final factor examined in Kimmelman is the previous relevant regulatory and statutory violations of the Respondents. There is no evidence of prior violations by either of the Respondents. This factor mitigates against heavy monetary 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 ALJs, except as modified below:

As it relates to Count One of the OTSC, I concur with the recommendation from ALJ Sanders that the Respondents be assessed a civil monetary penalty of $5,000 for the five separate instances of the Respondents entering into contacts prior to APA's licensure in this State.

As it relates to Count Two of the OTSC, I concur with the recommendation from ALJ Sanders that the Respondents be assessed a civil monetary penalty of $8,000 for the eight violations found in relation to this Count.

As it relates to Count Three of the OTSC, I concur with the recommendation from ALJ Sanders that the Respondents be assessed a civil monetary penalty of $12,500 for the fifty contracts that lacked the required language, information, or signature in this Count. However, I disagree

with ALJ Sanders' assessment that there is no evidence to link Bellamy to the unsigned contract and is, therefore, not liable for one of the fifty violations. As noted under my analysis for Count Three above, Bellamy is the sole owner of APA. There has been no evidence presented by any party showing that there was another licensed public adjuster who worked for APA and would be responsible for signing the contracts on APA's behalf. In every contract at issue in this matter, Bellamy signed the contract on behalf of APA. As such, I MODIFY the PSD and Initial Decision and FIND that both APA and Bellamy are jointly and severally liable for all of the violations contained in this Count.

As it relates to Count Four of the OTSC, I concur with the recommendation from ALJ Sanders that the Respondents be assessed a civil monetary penalty of $2,000 for the Respondents overcharging insureds on the two contracts, with T.S. and G.D., that the ALJ found in this Count. However, as I found that the Department had proven that the Respondents overcharged insureds on two additional contracts, with O.F. and M.C., I MODIFY the PSD and Initial Decision and assess an additional civil monetary penalty in the amount of $2,000 in relation to these contracts, for a total civil monetary penalty of $4,000 for Count Four of the OTSC.

As it relates to Count Five of the OTSC, I concur with the recommendation from ALJ Sanders that the Respondents be assessed a civil monetary penalty of $8,750 related to the thirty-five contracts that contain confusing and misleading contractual language regarding payments that the ALJ found in relation to this Count. However, as I found that the Department had proven that there were two additional contracts that contain the same confusing and misleading contractual language regarding payments, I MODIFY the PSD and Initial Decision and assess an additional $500 in relation to these contracts, for a total civil monetary penalty of $9,250 for Count Five of the OTSC.

As it relates to Count Six of the OTSC, I concur with the recommendations from ALJ Gertsman that the Respondents should be assessed a civil monetary penalty of $250 for each of the violations found in this Count. However, as I found that the Department has proven that the Respondents had entered into thirty-seven contracts with New Jersey insureds that created a fee structure that was not reasonably related to the services rendered, rather than the thirty-eight violations found by ALJ Gertsman, I MODIFY the Initial Decision and assess a civil monetary penalty of $9,250 for the thirty-seven violations found. Moreover, as I found that the Respondents committed an additional two violations in relation to the administrative fee charged to O.F. and R.F., I also MODIFY the Initial Decision and assess a civil monetary penalty of $500 for these for these two violations. Accordingly, the total civil monetary penalty is $9,750 for this Count.

In addition, to the civil monetary penalties set for above, I concur with and ADOPT the recommendation from ALJ Sanders that the Respondents be required to pay restitution in relation to Counts Four and Five of the OTSC. I concur in ALJ Sanders's restitution recommendation for G.D. in Count Four of the OTSC. However, for the reasons set forth in my analysis above, I MODIFY the PSD and Initial Decision regarding the restitution amounts to be imposed on the Respondents in relation to T.S., O.F., and M.C in Count Four of the OTSC and the thirty-six instances in Count Five where the Respondents collected fees on the gross settlement amount.[59] Accordingly, the following restitution amounts imposed upon the Respondents are as follows:

Contract Bates Number	**Client Initials**	**Restitution Amount**
0011	**G.D.**	**$323.71**
0012	**T.S.**	**$897.37**

[59] As noted above, although the Respondents entered into a contract with M.C., marked as Exhibit DOBI-0053, a settlement statement for this contract was not produced. Accordingly, there is no restitution that can be ordered with that contract.

0010	**O.F.**	**$2,093.43**
0054	**M.C.**	**$652.18**
0036	**E.L.**	**$275.95**
0037	**E.L.**	**$248.36**
0038	**R.T.**	**$592.85**
0039	**C.I.**	**$2,747.35**
0040	**C.I.**	**$2,098.64**
0041	**J.G.**	**$647.80**
0042	**J.G.**	**$443.84**
0043	**L.M.**	**$1,999.01**
0044	**L.S.**	**$262.80**
0045	**L.S.**	**$75.01**
0046	**A.S.**	**$199.25**
0047	**W.F.**	**$253.88**
0048	**L.W.**	**$791.81**
0049	**L.W.**	**$377.33**
0050	**L.H.**	**$997.65**
0051	**L.H.**	**$746.71**
0052	**S.G.**	**$1,231.37**
0055	**R.F**	**$650.01**
0056 & 0057	**B.R.**	**$2,961.84**
0058	**C.L.**	**$913.68**
0059	**A.C.**	**$1,429.32**

0060	**H.E.**	**$495.38**
0061	**H.E.**	**$967.48**
0062	**P.N.**	**$996.37**
0063	**E.M.**	**$278.55**
0064	**E.M.**	**$162.18**
0065	**B.N.**	**$455.10**
0066	**E.M.**	**$150.01**
0067	**B.L.**	**$291.47**
0068	**G.L.**	**$1,349.29**
0069	**G.L.**	**$698.92**
0070	**T.R.**	**$1,472.73**
0071	**G.B.**	**$565.64**
0072	**E.B.**	**$479.63**
N/A	**M.W.**	**$1,498.70**
	Total Restitution:	**$33,812.60**

In addition, I concur with and ADOPT the recommendation of ALJ Gertsman that pursuant to N.J.S.A. 17:22A-45(c), the Respondents additionally be required to reimburse the Department for its costs of investigation in the amount of $275.

Based on the above, the Respondents are jointly and severally liable for a total monetary penalty in the amount of $48,500 for the violations in Counts One through Six. The Respondents are jointly and severally liable for restitution in the amount of $33,812.60. Lastly, the Respondents are jointly and severally liable as to the costs of investigation in the amount of $275.00.

CONCLUSION

Having carefully reviewed the PSD, Initial Decision, the Exceptions submitted by the Respondents, the Exceptions and Reply submitted by the Department, and the entire record herein, I hereby ADOPT the findings and conclusions as set forth in the PDS and Initial Decision, except as modified herein, and hold that the Respondents violated the Public Adjusters' Act and accompanying regulations as charged in the OTSC, and has failed to present any legally or factually viable defenses to the violations of the Public Adjusters' Act and the regulations promulgated thereunder. Further, I ADOPT the conclusion that both of the Department's Motion for Summary Decisions should be granted on all six Counts set forth in the OTSC.

I also ADOPT ALJ Gertsman's recommendation and hereby ORDER the revocation of both Respondent APA and Respondent Bellamy's public adjuster licenses. I MODIFY the ALJs' recommendations as to the imposition of civil monetary penalties and ORDER that fines totaling $48,500 be imposed against the Respondent jointly and severally for the violations contained herein. I further MODIFY the Initial Decision as it relates to the allocation of these penalties. Therefore, the civil monetary penalty shall be allocated as follows: Count One: $5,000, Count Two: $8,000, Count Three: $12,500; Count Four: $4,000, Count Five: $9,250, and Count Six: $9,750. I further MODIFY the ALJ's recommendation as to the amount of restitution for Counts Four and Five of the OTSC and ORDER that the Respondents pay restitution in the total amount of $33,812.60 to their clients, as set forth in the chart above. I ADOPT ALJ Gertsman's recommendation and ORDER the Respondents to pay costs of investigation in the amount of $275.

It is so ORDERED on this _09______ day of ___March_______________, 2021.

____
Marlene Caride
Commissioner

Final Orders – Insurance/jd Advocate Public Adjuster and Bellamy FO