

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DOCKET NO.: BKI-10706-19
AGENCY DOCKET NO.: OTSC #E19-13

DEPARTMENT OF BANKING AND)
INSURANCE,)
)
Petitioner,)
)
v.)
)
KIRTI SHAH,)
)
Respondent.)

FINAL DECISION AND ORDER

This matter comes before the Commissioner of Banking and Insurance (“Commissioner”) pursuant to the authority of the New Jersey Insurance Producer Licensing Act at N.J.S.A. 17:22A-26 to -48 (“Producer Act”), the New Jersey Fraud Prevention Act at N.J.S.A. 17:33A-1 to -30 (“Fraud Act”) and all powers expressed or implied therein, for the purposes of reviewing the October 28, 2020 Initial Decision of Administrative Law Judge Carol I. Cohen (“ALJ”) (“October 28, 2020 Initial Decision”).

The October 28, 2020 Initial Decision incorporated the March 5, 2020 Order Granting Partial Summary Decision (“PSD”), which granted in part the Motion for Summary Decision (“MSD”) brought by the Department of Banking and Insurance (“Department”), (the October 28, 2020 Initial Decision and PSD are collectively referred to throughout this Final Decision and Order as the “Initial Decision”), resolved outstanding issues of the MSD that remained, recommended

the revocation of Shah's license, monetary penalties for violations of the Producer Act and the Fraud Act, and statutory penalties and costs of prosecution, including attorneys' fees.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On January 24, 2019, the Department issued Order to Show Cause No. E19-13 ("OTSC") against Kirti Shah ("Shah"). The OTSC alleges that Shah engaged in the following, in violation of the Producer Act and Fraud Act:

Count One - Shah altered a Certificate of Insurance ("Certificate") to indicate that the insurance premium due was \$1,517 and not \$517, in violation of N.J.S.A. 17:22A-40(a)(2), (6), (7), (8), (16) and N.J.S.A. 17:33A-4(a)(6). OTSC at 4-6.

Count Two - Shah failed to notify the Commissioner of his conviction for one count of fourth-degree forgery for altering and changing the writing of another without authorization, within thirty days, in violation of N.J.S.A. 17:22A-40(a)(2), (6), (7), (8), and (16); and further alleges that following his conviction for one count of fourth-degree forgery, a felony, Shah failed to obtain the necessary waiver from the Commissioner to be employed in the business of insurance as required in this State by N.J.A.C. 11:17E-1.3 and 18 U.S.C. 1033(e)(2). Id. at 6.

Count Three - Shah's Pennsylvania non-resident insurance producer license was revoked in Pennsylvania, in violation of N.J.S.A. 17:22A-40(a)(2) and (9). Ibid.

Simultaneously, the Department issued Order to Show Cause No. E19-12 ("OTSC No. E19-12"), seeking the immediate suspension of Shah's license pending completing of administrative proceedings. On March 25, 2019, the Commissioner issued an Order No. E19-31, suspending Shah's license pending the completion of administrative proceedings. Shah, pro se, submitted several e-mails in response to OTSC No. E19-12, in which he requested that the suspension of his license be lifted. Shah provided no basis or support for his request, and on June 3, 2019, the Commissioner issued Order No. E19-51, denying Shah's request.

On or about March 8, 2019, Shah submitted an Answer to the OTSC, wherein he denied some of the conduct alleged in OTSC. On August 5, 2019, the Department transmitted the matter 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. The matter was scheduled for a hearing on March 24, 2020.

On December 19, 2019, the Department, represented by Deputy Attorney General Brian Fitzgerald (“DAG Fitzgerald”), filed a MSD on all counts in the OTSC, claiming that no genuine issue of material fact remained in dispute. On January 16, 2020, Shah submitted a ‘Reply to State of New Jersey Dept. of Banking and Insurance Letter Brief in Support of its Motion for Summary Decision’ (“Shah’s Opposition”). On January 21, 2020, DAG Fitzgerald submitted a reply to Shah’s Opposition (“Department’s Reply”).

On March 5, 2020, the ALJ issued the PSD, wherein the ALJ found for the Department and against Shah as a matter of law on Counts One, Two and Three of the OTSC. The ALJ did not grant the Department’s request for penalties and license revocation, finding that a hearing regarding Shah’s ability to pay penalties assessed and whether his license should be suspended or revoked was needed. The hearing was scheduled for March 24, 2020 but was rescheduled due to the ongoing Coronavirus disease (“COVID-19”) pandemic. On October 28, 2020, Shah requested that rather than move forward with a plenary hearing, the ALJ render a decision based on the calculations outlined in the Department’s MSD. The ALJ closed the record and issued the October 28, 2020 Initial Decision, wherein the ALJ incorporated the PSD and concluded that Shah’s insurance producer license should be revoked and recommended monetary penalties totaling \$19,406.

On November 16, 2020, DAG Fitzgerald submitted a letter stating that the Department would not file Exceptions to the Initial Decision. Shah did not file Exceptions to the Initial Decision.

ALJ'S FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS

The ALJ noted that a motion for summary decision may be granted if there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law, citing N.J.A.C. 1:1-12.5(b) and R. 4:46-2(c). PSD at 6 - 7.

Further, the ALJ noted the following standard to be applied when deciding a motion for summary decision:

[T]he motion judge must consider whether competent evidential materials presented, when viewed in light out favorable to the non-moving party ... are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non moving party.

Id. at 7 (citing Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 523 (1995)).

In light of this standard, the ALJ found the Department prevailed as a matter of law on Counts One, Two and Three of OTSC. Id. at 7-9.

The ALJ found that the Department had proven the following material facts, which were admitted by Shah, including that (1) Shah altered the Certificate; (2) Shah was convicted of one count felony forgery in the fourth-degree for altering the Certificate; (3) Shah failed to notify the Commissioner of his conviction within thirty days; (4) Shah failed to obtain a waiver from the Commissioner to be employed in the business of insurance in New Jersey following his conviction; and (5) Shah's Pennsylvania non-resident insurance producer license was revoked. Id. at 5-7. Therefore, the ALJ concluded that no material facts are disputed. Id. at 9.

ALJ's Findings as to the Allegations Against Shah

As it relates to the conduct alleged in Count One, the ALJ found that it is undisputed that Shah altered the Certificate as set forth in the OTSC, which alleged that on or about August 15, 2016, CNA Insurance ("CNA") issued a Certificate to Highbridge Pharmacy ("Highbridge") with a premium of \$517. Id. at 1. CNA sent the Certificate to Shah for delivery and collection of the premium from Highbridge. Ibid. Subsequently, Shah altered the Certificate to reflect a premium payment of \$1,517. Ibid. The ALJ found that Shah admitted to altering the Certificate in both his responsive papers and in his plea in criminal court. Id. at 7-8.

As it relates to the conduct alleged in Count Two, the ALJ found that Shah failed to notify the Commissioner within thirty days of his conviction of fourth-degree forgery, as Shah admitted that he did not do so. Ibid. The ALJ noted that Shah raised several defenses, arguing first that he had relied on representations by the prosecutor in his civil case that the prosecutor was obligated to notify the Department, therefore Shah was relieved of his obligation. In addition, Shah argued he had notified a Department employee¹ of his guilty plea, therefore she, and the Department, were on notice that conviction and sentencing would follow. Id. at 5-6. However, the ALJ found these defenses unpersuasive and did not excuse Shah from meeting his obligation to notify the Commissioner. Ibid. As it relates to Shah's obligation to obtain a waiver from the Commissioner, the ALJ found that Shah admitted that he failed to do so, citing his need to care for his gravely ill son-in-law. Ibid. In addition, the ALJ noted that it is clear from communications with the Department that Shah knew he had an obligation to seek a waiver from the Commissioner and did not do so. Ibid.

¹ In 2017, Shah corresponded with Kerry Sullivan, Investigator of the Licensing and Insurance Education Office of the Department, via email which he provided in support of his argument that he had met his obligation to notify. Shah's Opposition at Exhibit 1.

As it relates to the conduct alleged in Count Three, the ALJ found that Shah admitted that he failed to notify Pennsylvania of his conviction and subsequently, his non-resident insurance producer license in Pennsylvania was revoked. Id. at 7-8.

ALJ's Penalty Recommendations

As to the penalty, the ALJ discussed the factors set forth in Kimmelman v. Henkles & McCoy, Inc., 108 N.J. 123, 137-39 (1987). The ALJ noted that one of the factors to be considered under Kimmelman is the ability of the violator to pay the fines. Id. at 9. The ALJ stated that while it is Shah's burden to provide evidence of hardship, Shah has not presented any proof of his financial situation, only averring to the fact that it would be an economic hardship on his family including his now widowed daughter and grandchild. Ibid.

In addition, the ALJ noted that it does not appear that Shah gained any profit from his illegal conduct, as CNA returned the amount of overpayment to the Highbridge. Ibid. In addition, the ALJ noted that the duration of the violation was short, one premium document was altered, and overpayment reimbursed quickly. Ibid. Regarding past violations, the ALJ states while the DAG specifically raises a similar violation from 2008, Shah does not address this issue. Ibid.

Lastly, the ALJ found that Shah breached his fiduciary duty and that a penalty must be assessed, noting that the fees outlined in the Fee Certification provided by DAG Fitzgerald, and filed with the MSD dated December 19, 2019 ("Fee Certification") appear to be completely reasonable and were not challenged by Shah. Ibid.

The ALJ recommended that Shah's insurance producer license should be revoked and that Shah should be assessed the following: civil monetary penalties as requested by the Department in the total amount of \$17,500 - \$10,000 for Shah's violation of the Producer Act, \$5,000 for Shah's violation of the Fraud Act, and \$2,500 for failing to notify the Commissioner of his felony

conviction; a statutory surcharge of \$1,000 pursuant to the Fraud Act; and costs of prosecution, including attorneys' fees, in the amount of \$546. October 28, 2020 Initial Decision at 3.

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).

For the reasons set forth above, I concur with the ALJ that Shah failed to adduce evidence that creates a genuine issue as to any material fact challenged and that summary decision is appropriate as to Counts One, Two, and Three of the OTSC.

Allegations Against Shah

Because the Initial Decision did not expressly enumerate which alleged statutory or regulatory violations were found, I make the following findings and modifications.

As to Count One, the Initial Decision does not make a specific finding as to whether Shah's conduct constitutes a violation of N.J.S.A. 17:22A-40(a)(2) (prohibits the violation of any insurance law), (6) (prohibits the conviction of a felony or crime of the fourth-degree or higher), (7) (prohibits unfair trade practices or fraud), (8) (prohibits fraudulent or dishonest practices, untrustworthiness or financial irresponsibility), and (16) (prohibits the commission of a fraudulent act); and N.J.S.A. 17:33A-4(a)(6) (prohibits the presentation of a certificate of insurance that

contains any false or misleading information concerning the policy of insurance of which the certificate makes reference) as alleged in Count One of the OTSC.

However, in the discussion of whether the Shah's actions constituted a violation of the statutory provisions in Count One, the ALJ specifically found that Shah altered a Certificate of Insurance ("Certificate") to indicate that the insurance premium due was \$1,517 and not \$517, and that summary decision was appropriate. PSD at 4, 7. I concur and I FIND that this conduct constitutes a violation of N.J.S.A. 17:22A-40(a)(2), (7), (8), and (16); and N.J.S.A. 17:33A-4(a)(6) as alleged in Count One of the OTSC.

As noted above, Count One of the OTSC also alleges that Shah's conduct is in violation of N.J.S.A. 17:22A-40(a)(6), which prohibits the convictions for a felony or crime of the fourth-degree or higher. The factual finding related to Count One that Shah altered a Certificate does not support the conclusion that Shah's conduct as alleged in Count One is a violation of N.J.S.A. 17:22A-40(a)(6).

As to Count Two, the Initial Decision does not make a specific finding as to whether Shah's conduct constitutes a violation of N.J.S.A. 17:22A-40(a)(2) (prohibits the violation of any insurance law), (6) (prohibits the convictions for a felony or crime of the fourth-degree or higher), (7) (prohibits unfair trade practices or fraud), (8) (prohibits fraudulent or dishonest practices, untrustworthiness or financial irresponsibility), and (16) (prohibits the commission of a fraudulent act); and N.J.A.C. 11:17E-1.3 (any person convicted of a felony involving breach of trust and dishonesty that shall be employed in the business of insurance in this State in any capacity must have first obtained a waiver from the Commissioner) as alleged in Count Two of the OTSC.

Count Two of the OTSC alleges that Shah pleaded guilty to and was convicted of fourth degree forgery, a felony, and failed to notify the Commissioner within 30 days of his conviction

of forgery, in violation of N.J.S.A. 17:22A-40(a)(2), (6), (7), (8), and (16). In the discussion of whether Shah's actions constituted a violation of N.J.S.A. 17:22A-40(a)(2), (6), (7), (8), and (16), the ALJ specifically found that Shah was convicted of one count of felony forgery in the fourth degree for altering the Certificate that that Shah failed to notify the Commissioner of this felony conviction within thirty days. PSD at 7-8. I concur and I FIND that this conduct constitutes a violation of N.J.S.A. 17:22A-40(a)(2), (6), (7), (8) and (16). Further, I find Shah's failure to notify the Commissioner of his conviction for one felony count of forgery in the fourth-degree is in violation of N.J.S.A. 17:22A-40(a)(18), which requires licensees to notify to the Commissioner within thirty days of a conviction of any crime. 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." As set forth above, the ALJ found that it was undisputed that Shah had failed to notify the Commissioner of his conviction within thirty days. Shah was on notice as to the factual basis underlying Count Two of the OTSC in this matter. Therefore, the allegations under Count Two of the OTSC should be conformed to reflect the proofs and include a violation of N.J.S.A. 17:22A-40(a)(18) for Shah's failure to notify the Commissioner of his conviction.

In addition, Count Two of the OTSC alleges that following his conviction of fourth degree forgery, a felony, Shah failed to obtain a waiver from the Commissioner to be employed in the business of insurance in this State as required by N.J.A.C 11:17E-1.3 and 18 U.S.C. 1033(e)(2). In the discussion of whether Shah's actions constituted a violation of these provisions, the ALJ specifically found that Shah admitted that he failed to obtain waiver from the Commissioner. PSD

at 8. I concur and I FIND that this conduct constitutes a violation of N.J.A.C 11:17E-1.3 and 18 U.S.C. 1033(e)(2).

Further, I find Shah's failure to seek a waiver from the Commissioner also constitutes a violation of N.J.S.A. 17:22A-40(a)(18), which requires certain licensees to obtain written consent to be employed in the business of insurance in this State without first obtaining a waiver pursuant to 18 U.S.C. 1033 and 1034.² As discussed above, amending the pleadings in this matter would not be create undue prejudice, pursuant to N.J.A.C. 1:1-6.2(a). As the ALJ found that it was undisputed that Shah failed to seek a waiver from the Commissioner pursuant to 18 U.S.C. 1033 and 1034, Shah was on notice as to the factual basis underlying Count Two of the OTSC in this matter. Therefore, the allegations under Count Two of the OTSC should be conformed to reflect the proofs and include a second violation of N.J.S.A. 17:22A-40(a)(18) for Shah's failure to seek a waiver from the Commissioner.

In conclusion, I find that by pleading guilty to the fourth degree felony forgery and failing to notify the Commissioner of such within 30 days, in violation of N.J.S.A. 17:22A-40(a)(2), (6), (7), (8) and (16) as alleged in Count Two of the OTSC. Further, I modify the pleadings to conform with the proofs and find this conduct in violation of N.J.S.A. 17:22A-40(a)(18). In addition, I find that Shah failed to obtain the necessary waiver from the Commissioner, in violation of N.J.A.C 11:17E-1.3 and 18 U.S.C. 1033(e)(2). Further, I modify the pleadings to conform with the proofs and find this conduct in violation of N.J.S.A. 17:22A-40(a)(18).

As to Count Three, the Initial Decision does not make a specific finding as whether Shah's conduct constitutes a violation of N.J.S.A. 17:22A-40(a)(2) (prohibits the violation of any

² As discussed above, N.J.A.C 11:17E-1.3 sets forth the procedure for seeking a waiver from the Commissioner pursuant to 18 U.S.C. 1033 and 1034.

insurance law) and (9) (prohibits the revocation of an insurance producer license in any other state), as alleged in Count Three of the OTSC. However, in the discussion of whether the Shah's actions constituted a violation of the statutory provisions in Count Three, the ALJ specifically found that Shah's non-resident insurance producers license was revoked in Pennsylvania. PSD at 7-8. I concur and I FIND that this conduct constitutes a violation of N.J.S.A. 17:22A-40(a)(2) and (9) as alleged in Count Three of the OTSC.

Penalties Against Shah

Revocation of Shah's Insurance Producer License

With respect to the appropriate action to take against Shah's insurance producer license, I find that the record is more than sufficient to support license revocation and, in fact, compels the revocation of Shah's license. Accordingly, I adopt the ALJ's recommendation that Shah's insurance producer license be revoked.

The Commissioner is charged with the duty to protect the public welfare and to instill public confidence in both insurance producers and the 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 NJ. Super. 263 (App. Div. 1967)). Accordingly, the public's confidence in a licensee's honesty, trustworthiness, and integrity are of paramount concern. Ibid. The nature and duty of an insurance producer "calls for precision, accuracy and forthrightness." Fortunato v. Thomas, 95 NJ.A.R. (INS) 73 (1993). A producer is held to a high standard of conduct and should fully understand and appreciate the effect of irresponsible conduct on the insurance industry and on the public.

As the public, in general, is adversely affected in a significant way by insurance fraud, New Jersey views insurance fraud as a serious problem to be confronted aggressively and has a

particularly strong public policy against the proliferation of insurance fraud. Palisades Safety and Ins. Ass'n v. Bastien, 175 N.J. 144, 150 (2003). 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). Because of the strong public interest in regulating insurance producers, revocation has consistently been imposed against the licenses of New Jersey insurance producers that engage in fraudulent acts. Commissioner v. Hohn, 2013 N.J. AGEN LEXIS 459 (March 18, 2013).

As set forth above, it is undisputed that Shah engaged in a fraudulent act by altering a Certificate of Insurance, was subsequently convicted of one count felony forgery in the fourth-degree for altering the Certificate, failed to notify the Commissioner of his conviction within thirty days, failed to obtain a waiver from the Commissioner to be employed in the business of insurance in New Jersey following his conviction and had his Pennsylvania non-resident insurance producer license revoked. PSD at 5-7. Accordingly, I find that revocation of Shah's license is necessary and appropriate as licensure penalty serves the need of protecting the public and maintaining public faith in the insurance industry.

Monetary Penalty Against Shah

The Commissioner may levy penalties against any person violating the Producer Act, not exceeding \$5,000 for the first offense and not exceeding \$10,000 for each subsequent offense. N.J.S.A. 17:22A-45(c). In addition, the Commissioner may order reimbursement of the costs of investigation and prosecution for violations of the Producer Act. Ibid. Furthermore, the Commissioner may levy penalties against any person violating the Fraud Act, not exceeding \$5,000 for the first offense, not exceeding \$10,000 for the second offense, and not exceeding \$15,000 for each subsequent offense in addition to restitution. N.J.S.A. 17:33A-5(c). In addition,

under the Fraud Act, the Commissioner may order reimbursement of costs and attorneys' fees. Ibid. Lastly, the Commissioner may order the payment of a \$1,000 statutory surcharge. N.J.S.A. 17:33A-5.1.

In setting a civil penalty, Kimmelman holds that the following factors must be considered: (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. 108 N.J. at 139.

The first Kimmelman factor addresses the good faith or bad faith of the respondent. I find that Shah's bad faith was evidenced by his conduct wherein he altered the Certificate to reflect a higher premium, thus disregarding the best interests of his client. In addition, I concur with the ALJ's conclusion that based on the documentary evidence provided by Shah, he knew of his obligation to notify the Commissioner of his conviction and to seek a waiver and failed to do both, and find that his knowing neglect to satisfy both requirements demonstrates his bad faith. I find this factor favors the imposition of a monetary penalty.

The second Kimmelman factor is the ability of the respondent to pay the penalties imposed. Shah has not provided any information regarding his inability to pay penalties. 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).³ I concur with the ALJ that this factor favors the imposition of a civil penalty, as Shah failed to introduce specific evidence regarding his financial limitations.

³ The Respondent in Commissioner v. Shah, OAL Dkt. No. BKI 11903-05, Initial Decision (04/15/08), Final Decision and Order (09/02/08) is the same Respondent in this matter. This prior decision, considered in light of the additional time provided by the ALJ in the instant matter for Shah to produce evidence of his ability to pay, weigh strong in favor of a civil monetary penalty.

The third Kimmelman factor relates to the profits obtained. I concur with the ALJ that it does not appear that Shah gained any profit from his illegal conduct. PSD at 9.

The fourth factor in Kimmelman examines the resulting injury to the public. The Commissioner is charged with the duty to protect the public welfare and to instill public confidence in both insurance producers and the insurance industry. Commissioner v. Andrade, OAL Dkt. No. BKI 09148-19, Initial Decision (01/24/19), Final Decision and Order (04/04/19). The ALJ found that in the instant matter, there is no doubt Shah breached his fiduciary duty to his client and that a penalty must be assessed. PSD at 9. I concur and note that when fraud is committed by a licensee, public confidence in the insurance industry is damaged; therefore, this factor favors the imposition of a civil penalty.

Regarding the fifth Kimmelman factor, the duration of the illegal activity, the ALJ notes that the duration of the violation was short, one premium document was altered, and overpayment reimbursed quickly. Id. at 9.

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. The record reflects that Shah has been convicted of one count of fourth-degree forgery for altering and changing the writing of another without authorization following a plea agreement. PSD at 2. While this factor mitigates the need for a significant civil penalty, I note that the penalties recommended by the ALJ are well below the available statutory minimum and do not rise to being unduly punitive.

The final factor examined in Kimmelman is the previous relevant regulatory and statutory violations of the respondents, and if past penalties have been insufficient to deter future violations. In Final Decision and Order No. E08-73, issued on September 1, 2008, the Commissioner found

that Shah had altered and submitted to an insurance company a repair invoice in support of an insurance claim, in violation of N.J.S.A. 17:22A-40(a)(1), (4) and (20) and failed timely notify the Commissioner of his indictment, in violation of N.J.S.A. 17:22A-40(a)(18) and N.J.S.A. 17:22A-47, similar conduct is at issue again in this matter. Final Decision and Order No. E08-73 imposed fines of \$1,725 and a six-month suspension of Shah's license. As these previous penalties have not been sufficient to deter Shah's current conduct, I find that this factor weighs in favor of a significant civil penalty.

No one 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”). In light of the aggravating and mitigating factors present and the violations of the Producer Act and the Fraud Act set forth above, I adopt the recommendations of the ALJ in the total amount of \$17,500: \$10,000 for Shah's violations of the Producer Act enumerated in Counts One and Two, \$5,000 for Shah's violation of the Fraud Act enumerated in Count One, and \$2,500 for Shah's violations of the Producer Act enumerated in Count Three.

In addition, pursuant to N.J.S.A. 17:33A-5(c), the Commissioner may order costs of prosecution, including attorneys' fees, for any person violating the Fraud Act. In the instant case, the ALJ recommended the imposition of the costs of prosecution in the amount of \$546, finding the Fee Certification reasonable and uncontested by Shah. PSD at 9. The Fee Certification establishes the reimbursement requested is limited to the costs associated with violations of the Fraud Act alleged in Count One the OTSC. I concur with the ALJ and order Shah pay the costs of prosecution, including attorneys' fees, in the amount of \$546.

Lastly, pursuant to N.J.S.A. 17:33A-5.1, any person who is found to have committed insurance fraud under the Fraud Act shall be subject to a surcharge in the amount of \$1,000. For all the reasons set forth above, Shah has committed insurance fraud under the Fraud Act; therefore, I concur with the ALJ and order the imposition of the \$1,000 statutory surcharge.

CONCLUSION

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

Specifically, I ADOPT the ALJ's conclusion that Shah's conduct is in violation of N.J.S.A. 17:22A-40(a)(2), (7), (8), (16) and N.J.S.A. 17:33A-4(a)(6) set forth in Count One.

I ADOPT the ALJ's conclusion that Shah's conduct is in violation of N.J.S.A. 17:22A-40(a)(2), (6), (7), (8) and (16) and N.J.A.C. 11:17E-1.3 and 18 U.S.C. 1033(e)(2) set forth in Count Two. In addition, I MODIFY the pleadings to conform with the proofs and FIND that found conduct related to Count Two constitutes two violations of N.J.S.A. 17:22A-40(a)(18).

I ADOPT the ALJ's conclusion that Shah's conduct is in violation N.J.S.A. 17:22A-40(a)(2) and (9) set forth in Count Three.

I ADOPT the ALJ's recommendation for the imposition of the recommended civil monetary penalty and ORDER Shah pay a total of civil monetary penalties of \$17,500 as follows: \$10,000 for Shah's violations of the Producer Act enumerated in Counts One and Two, \$5,000 for Shah's violation of the Fraud Act enumerated in Count One, and \$2,500 for Shah's violations of the Producer Act enumerated in Count Three.

I ADOPT the ALJ's recommended imposition of a statutory surcharge and ORDER the Shah pay a surcharge of \$1,000 pursuant to N.J.S.A. 17:33A-5.1 for violation of the Fraud Act.

I ADOPT the recommended imposition of the costs of prosecution, including attorneys' fees, under the authority of N.J.S.A. 17:33A-5(c) of the Fraud Act and ORDER that Shah pay \$546.

Finally, I ADOPT the ALJ's recommendation and revoke Shah's producer license.

It is so ORDERED on this 17 day of March, 2021.



Marlene Caride
Commissioner

Final Orders – Insurance/AR Shah FO