ORDER NO. A26-06

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF: ZIA H. SHAIKH Respondent.	**ORDER DENYING MOTION TO VACATE FINAL ORDER NO. E16-56**

THIS MATTER, having been opened before the Acting Commissioner ("Commissioner") of the Department of Banking and Insurance, State of New Jersey ("Department"), by Respondent Zia H. Shaikh ("Respondent"), upon Respondent's motion to vacate Final Order No. E16-56, entered June 13, 2016; and for the reasons that follow, Respondent's motion is DENIED.

Respondent seeks reconsideration of the ten-year-old final order which resulted in the revocation of his insurance producer license and the levy of fines and costs. Because Respondent's motion is time barred, it must fail. However, even if Respondent moved in time, he would still be unable to establish reconsideration is warranted on the merits of his arguments.

ABBREVIATED MATERIAL BACKGROUND

Respondent was a licensed, non-resident insurance producer under N.J.S.A. 17:22A-32. In or about August 2010, Respondent issued or caused the mailing of 3,550 postcards within the State. Each postcard stated the intended recipient was the beneficiary of an annuity which had been "orphaned" for longer than five years. On March 30, 2016, the Department issued Order to Show Cause ("OTSC") No. E16-23, alleging Respondent's actions were a violation of New Jersey

law. Particularly, Respondent was alleged to have accrued 3,550 violations by enlisting untrue, deceptive, or misleading practices, of which was cause for license probation, suspension, revocation, or refusal to renew, N.J.S.A. 17:22A-40(a)(2), (7), (8), and (16); providing false information and advertising, N.J.S.A. 17B:30-4; and untruthful and misleading advertising, N.J.A.C. 11:2-23.4.

Respondent was provided sufficient notice and the opportunity to contest the charges, N.J.A.C. 11:17D-2.1(a)(1), but failed to deliver a written request for a hearing within twenty calendar days under N.J.A.C. 11:17D-2.1(d). As Respondent's "failure to respond, as required by the notice," within time, "shall be deemed to be an admission to all of the allegations, charges and conclusions contained in the notice," no further proceeding was warranted before the issuance of a final order by the Commissioner. N.J.A.C. 11:17D-2.1(b).

On June 21, 2016, Final Order No. E16-56 was entered by the Commissioner, resulting in: the revocation of Respondent's non-resident insurance producer's license; a civil penalty of $71,000 for the 3,550 violative acts; and investigation reimbursement costs of $1,388.30.

On July 21, 2016, Respondent moved to reconsider and vacate Final Order No. E16-56, which was subsequently denied. See Order No. A17-107. On January 25, 2018, Respondent moved to dismiss Final Order No. E16-56, which was likewise denied. See Order No. A18-110

Respondent appealed twice, once in 2016 and once in 2017: the first appeal[1] was voluntarily "dismissed due to [Respondent's] inability to pay the $250 filing fee"; the second appeal[2] was also dismissed voluntarily, with the Appellate Division declining to remand the matter

[1] In re Proceeding by the Comm'r of Banking and Ins., No. A-5252-15 (App. Div. Nov. 10, 2016).

[2] In re Proceeding by the Comm'r of Banking and Ins., State of New Jersey, to Fine, Suspend, and/or Revoke the Insurer Producer License of Zia Hassan Shaikh, No. A-3611-16, M-7179-16 (App. Div. Jul. 7, 2017).

to the Commissioner. See Letter, Request to Rescind Final Order E16-56 and Reset Administrative Hearing on Default Judgment dated June 24, 2016 (E16-56), (Oct. 12, 2016), at 1.

On August 29, 2026, Respondent emailed a letter to the Commissioner requesting Final Order No. E16-56 be vacated and additional related relief be granted.

ANALYSIS

Generally, an agency has discretion in choosing the procedural mode of action in which it exercises its decision-making functions, however, this "procedural mode" is "valid only when there is compliance with the provisions of the Administrative Procedure Act [("APA")], N.J.S.A. 52:14B-1 to - 15, and due process." In re Provision of Basic Generation Serv. for Period Beginning June 1 2008, 205 N.J. 339, 347 (2011). Although the APA guides administrative proceedings, it does not create a substantive right to an administrative hearing, Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Com'n, 234 N.J. 150, 158 (2018) (quoting In re Fanelli, 174 N.J. 165, 172 (2002)), except when an agency revokes or refuses to renew a license. Fanelli, 174 N.J. at 172 (quoting Christ Hosp. v. Dep't of Health & Sr. Servs., 330 N.J. Super. 55, 61 (App. Div. 2000)); see also N.J.S.A. 52:14B-11. But when a case is contested, "all parties shall be afforded an opportunity for hearing after reasonable notice." N.J.S.A. 52:14B-9.

In the absence of a procedural rule under both the APA and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -20.3, adjudication can "proceed in accordance with the New Jersey Court Rules." N.J.A.C. 1:1-1.3. Thus, the Commissioner has the discretion to reopen a final order for equitable grounds under Rule 4:50-1. Waters v. Island Transp. Corp., 229 N.J. Super. 541, 550 (App. Div. 1989) (quoting Hyman v. Essex Cty. Carpet Cleaning Co., 157 N.J. Super. 510, 516 (App. Div. 1978); Beese v. First Nat'l Stores, 52 N.J. 196, 200 (1968)). Reconsideration of a final order under Rule 4:50-1 must be asserted under at least one subsection,

which are:

> (a) mistake, inadvertence, surprise, or excusable neglect;
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> (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49;
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> (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
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> (d) the judgment or order is void;
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> (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or
>
> (f) any other reason justifying relief from the operation of the judgment or order.
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> [R. 4:50-1.]

Further, "applications to vacate default judgments are liberally construed so that cases may be decided on the merits." Romero v. Gold Star Distribution, LLC, 468 N.J. Super. 274, 294 (App. Div. 2021) (citing Pressler & Verniero, Current N.J. Court Rules, cmt. 4.1 on R. 4:50-1 (2021); Pro. Stone, Stucco & Siding Applicators, Inc. v. Carter, 409 N.J. Super. 64, 68 (App. Div. 2009). "A default judgment, however, will not be disturbed unless defendants can 'establish that [their] failure to answer was due to excusable neglect and that [they have] a meritorious defense.'" Ibid. (alterations in original) (quoting Goldhaber v. Kohlenberg, 395 N.J. Super. 380, 391 (App. Div. 2007)).

Respondent now moves under Rule 4:50-1 to vacate Final Order No. E16-56 over ten years after the order was issued, and "upon a showing of good cause." Letter, Request to Vacate E16-56, (Aug. 28, 2026), at 1. Because Respondent did not reasonably move in time, as this instant motion was filed on August 26, 2026, Respondent's motion must be denied.

Respondent's Motion is Time Barred

Time limitations imposed upon a motion to vacate judgment under Rule 4:50-1 balance "[t]he strong interests in finality of judgments and judicial efficiency," with "the need to achieve equity and justice." 257-261 20th Ave. v. Roberto, 259 N.J. 417, 436 (2025) (additional citations omitted).

Although in his initial motion Respondent does not cite under which subsection of Rule 4:50-1 he is moving, subsections (a), (b), and (c) are barred after one year, with very limited exception, and reconsideration under subsections (d), (e), and (f) must be "made within a reasonable time." R. 4:50-2. A reasonable time "could be more or less than one year after the judgment, depending on the circumstances." Romero, 468 N.J. Super. at 296. However, when a "case does not involve a defendant who was unaware of the pending litigation, of a request to enter default, or of entry of a judgment . . . ," or if "[i]t also does not involve a defendant who was deprived of an opportunity to defend," then the circumstances do not warrant an extension of reasonable time past one year. Ibid. See also N.J. Div. of Child Prot. & Permanency v. A.L., 462 N.J. Super. 127, 136 n.5 (App. Div. 2020) (citing Orner v. Liu, 419 N.J. Super. 431, 436-37, (App. Div. 2011) (emphasizing that motions governed by the outer limit of one year must still be filed within "a reasonable time" which may be far shorter than one year)).

Here, Respondent asserts he was never properly noticed of the Department's OTSC, and was therefore delayed in answering the charges against him, which he contends resulted in prejudice. However, here Respondent confuses the issues. Respondent has been aware of Final Order No. E16-56 since at least July 21, 2016. See Letter, Zia Hassan Shaikh (E16-23 and E16-56), (Jul. 21, 2016), at 1. Respondent timely appealed the final order twice, but voluntarily dismissed each appeal before the Appellate Division could weigh the merits of his arguments. See

R. 2:4-1 (appeals must be made within forty-five days of a final order).

Therefore, presently, and pertaining to the instant motion filed August 29, 2026, this is not a matter that "involves a defendant who was unaware of . . . entry of a judgment," or "a defendant who was deprived of an opportunity to defend," as Respondent was on notice of the final order in July 2016 and never followed through with either of his appeals. Romero, 468 N.J. Super. at 296. Additionally, our jurisprudence does not recognize perpetual motions; Respondent cannot argue that this instant motion is a continuation of his previous motions and is therefore still within time. Further, Respondent has not cited any binding precedent in which a judgment or order is vacated after ten years, and in which an adjudicative body has deemed that elapsed time frame to be "reasonable." Thus, "the circumstances do not warrant an extension of reasonable time past one year," rendering Respondent's instant Rule 4:50-1 motion for reconsideration of Final Order No. E16-56 time barred.

The Final Order is Not Void as Respondent was Properly Served

Even if Respondent is not time barred in moving for reconsideration, his motion would still be procedurally denied. Respondent clarifies, albeit in his reply brief, that the final order should be vacated under Rule 4:50-1(d) because of lack of personal jurisdiction:

> My request of August 28, 2026 rests on a single legal proposition: that Final Order No. E16-56 is void, because the notice that carried it failed as a matter of constitutional law, and the Department's own file shows that it knew the notice had failed while there was still ample time to cure. That is relief under [Rule] 4:50-1(d) — "the judgment or order is void" . . . .
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> The Opposition analyzes [Rule] 4:49-2 reconsideration and [Rule] 4:50-1(a), (b), and (f). It quotes subsection (d) once, in a block quotation at page 9, and never returns to it. It does not mention Mullane v. Central Hanover Bank & Trust Co.[, 339 U.S. 306 (1950)]. It does not mention Jones v. Flowers[, 547 U.S. 220 (2006)]. . . .

. . . .

> First, no decision-maker in ten years has ever ruled on subsection (d). Order No. A17-107 expressly decided subsections (a) and (f) only. [(Citation omitted).] There is therefore no prior ruling on this ground to which finality can attach.
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> Second, the time bar the [o]pposition invokes does not reach subsection (d), and the [o]pposition says so itself at page 9.
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> . . . .
>
> [Letter, Reply of Zia H. Shaikh, at 1-2 (emphasis added) (original emphasis omitted).]

Mullane stands for the proposition that the requirements of due process are met only when notice is reasonably conveyed, and not when the conveyance is a "mere gesture." 339 U.S. at 314-25. Jones held that notice must be reasonably calculated to adequately inform the intended recipient. 547 U.S. at 237-38.

Here, in July 2016, Respondent conceded the Department's notice of OTSC No. E16-23 was reasonably conveyed, however, Respondent did not receive the notice because his mail forwarding service failed:

> Please accept my sincerest apologies for this delayed response to you and to the [Department]. As your records will reflect that all of your correspondence went to the 412 N. Main St[.,] Unit 100[,] Buffalo, WY 82834 address[,] and it never got forwarded to my above address in New Jersey. I only recently learned about the [OTSC] . . . and the subsequent final order revoking my New Jersey insurance producer's license[] and imposing penalties, fines[,] and fees.
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> [Letter, Zia Hassan Shaikh (E16-23 and E16-56), (Jul. 21, 2016), at 1).]

Additionally, timely service was effectuated at Respondent's Buffalo, Wyoming address under Rule 4:4-4, and N.J.A.C. 11:17-2.8, which states, in relevant part:

> The requirements for business addresses and notification of change of business mailing or location address, residence address, phone

number and email address, are as follows:

> 1. All licensees shall provide the Department with a complete and current business mailing address, and, if different, a street or location address, phone number and, if applicable, email address. Individual licensees shall also provide the Department with a complete and current residence address, phone number and, if applicable, email address.
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> 2. All licensees shall provide in the format prescribed by the Department notification of any change of business mailing or location address, residence address, phone numbers and email addresses within [thirty] days of the change and maintain a proof of notification for five years or until receipt of a license or other documentation from the Department showing the new address. Licensees may submit changes of address online through the National Insurance Producer Registry at www.nipr.com.
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> 3. Any legal process issued pursuant to the statutory authority of the Commissioner including, but not limited to, subpoenas, orders and orders to show cause may be served by sending the documents to the business mailing or residence address of the licensee then on file with the Department. . . .

[N.J.A.C. 11:17-2.8(f).]

From the time the OTSC was issued on March 30, 2016, until Final Order No. E16-56 was entered by the Commissioner on June 21, 2016, Respondent was a licensed, non-resident insurance producer and required to inform the Department of any change to his current residence and business or location addresses. Ibid.

On June 13, 2016, Deputy Attorney General ("DAG") Ryan S. Schaffer, certified that a copy of the OTSC was mailed, both by regular mail and certified mail, return receipt requested. See Schaffer Cert., (Jun. 13, 2016), at ¶ 3; see also R. 4:4-4; N.J.A.C. 11:17-2.8(f). DAG Schaffer also certified that while the regular mail was returned, "[t]he certified mailing to [r]espondent was

signed by [r]espondent's agent on April 11, 2016." Id. at ¶¶ 4-5; see also Schaffer Cert., ex. 3 (United States Postal Service, Domestic Return Receipt confirming delivery at 412 North Main Street, Unit 100, Buffalo, WY 82834, signed by "Erin Hogan").

Regarding service on his agent, Respondent argues "[a]n employee of a mail-receiving service who signs a delivery receipt is not a person authorized to accept service of process on the addressee's behalf . . . ." Letter, Reply of Zia H. Shaikh, at 8. However, this argument fails, as service on upon an individual proprietor's representative can be effectuated if the representative is "'so integrated with the organization that he [or she] will know what to do with the papers and that he or she should stand in a position as to render it fair.'" Coryell, LLC v. Curry, 391 N.J. Super. 72, 81 (App. Div. 2006) (quoting O'Connor v. Abraham Altus, 67 N.J. 106, 128); see also Pressler & Verniero, cmt. 2.3 on R. 4:4-4 (service for individual proprietors). By his own admission, Respondent's agent was utilized to collect his mail and was in a position to know what to do with it once received. To argue otherwise would mean Respondent supplied an address to the Department from which he would not be able to receive mail. Likewise, Respondent neither explains why he utilized a mail forwarding service in Wyoming when he maintains an office within the State, nor why it is not his responsibility to ensure the forwarding service he engaged for the purpose of receiving official notice from the Department is working properly.

Respondent's remaining argument regarding service concerns his assertion that he was represented by counsel, of which he argues the Department was informed, and, seemingly, that service on Respondent was improper as it violates the "no contact rule." See RPC 4.2; Neil S. Sullivan Assocs., Ltd. v. Medco Containment Servs., Inc., 257 N.J. Super. 155, 157 (Super. Ct. 1992) (The no contact rule "protects a represented party from the experience and skill of opposing counsel by prohibiting any communications without the consent of the represented party's

attorney."). Respondent states at the time the OTSC was issued, he was represented by White Fleischner & Fino, LLP:

> I have previously informed the Department . . . that my former attorney Brian Thorn is no longer available to handle this matter and it was confirmed by Mr. Benjamin Fleishman the managing partner of the law firm White Fleischner & Fino, LLP that no correspondence [about] the . . . OTSC and the subsequent final order were received by the firm as my attorney of record.
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> [Letter, Reply of Zia H. Shaikh, ex. 4.]

However, there is no record of any attorney entering an appearance on behalf of Respondent. Nor is there any written communication on record from an attorney representing Respondent. To the contrary, Respondent corresponds via email and regular mail directly with the Department throughout the pendency of this matter, including in regard to this instant motion. Because there is no record of an attorney ever filing a legal paper or certification, nor directly communicating informally with the Department, and because Respondent has not submitted any evidence to the contrary, there is nothing in the record that may establish the Department's purported failure to serve Respondent's attorney is a violation of the "no contact rule."

The Department was Required to Enter a Final Order Upon the Failure to Respond

After Respondent failed to answer the OTSC, the final order was entered, as is required under N.J.A.C. 11:17D-2.1(b), which states, in part:

> 1. The alleged violator's failure to respond, as required by the notice, within the time provided in the notice, shall be deemed to be an admission to all of the allegations, charges and conclusions contained in the notice, and no further proceeding shall be required prior to the execution of a final order that imposes the administrative penalty or penalties described in the notice.
>
> 2. If no response is received within the time provided in any notice to suspend or revoke a license or authority to conduct any activity regulated by Title 17 and 17B, the Department shall prepare a final order suspending or revoking the license or authority to conduct

> such activity, and mail a copy of the order to the violator at his or her last known business address on file with the Department.
>
> . . . .
>
> [N.J.A.C. 11:17D-2.1(b) (emphasis added).]

Stated differently, the Department must "prepare a final order suspending or revoking the license or authority to conduct such activity," "[i]f no response is received within the time provided in any notice to suspend or revoke a license or authority to conduct any activity regulated by Title 17 and 17B." N.J.A.C. 11:17D-2.1(b)(2). Once Respondent was properly noticed, he was required to respond within twenty calendar days:

> [a]n alleged violator shall have 20 calendar days from service of the notice of intent to impose an administrative penalty within which to deliver a written request for a hearing to: Chief of Investigations, New Jersey Department of Banking and Insurance, PO Box 329, Trenton, New Jersey 08625-0329, or faxed to the Department at (609) 292-5337.
>
> [N.J.A.C. 11:17D-2.1(d)(1).]

The Department could not refrain from preparing a final order once Respondent did not answer to the OTSC; it is obligated to under N.J.A.C. 11:17D-2.1(b). As the Department properly complied with N.J.A.C. 11:17D-2.1(b)(1) to (2) once Respondent failed to answer, it did not have the discretion to prescribe an alternative course of action.

Respondent's Defense is Unmeritorious

Finally, Respondent does not contend that all 3,550 intended recipients of his postcard were actual beneficiaries of an "orphaned" annuity. Nor has Respondent argued that mailing postcards containing false information to 3,550 individuals within the State does not constitute a misleading or fraudulent practice.

Respondent states: "the duty to ensure that advertising sent in my name was truthful and

not misleading was mine. It was not delegable." Letter, Reply of Zia H. Shaikh, at 11. Simultaneously, Respondent delegates responsibility for the message on the postcards to an advertiser because he was not the author of the message: "I do not admit that I wrote, designed, or mailed the postcards. . . . Responsibility of a vendor's work is not authorship of it." Ibid. Further, Respondent argues he did not possess the scienter required to be held liable; that he did not have the knowledge or intent to engage in a fraudulent act. Ibid. But Respondent fails to appreciate that by contracting with another to engage in fraud for Respondent's benefit, he did have knowledge of the falsity. See Jewish Ctr. of Sussex Cty. v. Whale, 86 N.J. 619, 625 (1981) (defining scienter as the "knowledge of the falsity and an intention to obtain an undue advantage therefrom."). Likewise, as a licensee, Respondent's duty to comply with the law is nondelegable. Instructing another to act on one's behalf is not a liability shield.

Respondent additionally asserts that the mailing of 3,550 postcards was a single act, and should be treat as such, instead of the Commissioner treating his conduct as 3,550 separate violations under N.J.S.A. 17:22A-40(a)(8) (using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility). See Letter, Reply of Zia H. Shaikh, at 11. However, to substantiate this assertion, Respondent miscounts the number of acts in which he engaged, stating: "[o]ne mailing was charged as 3,550 offenses. Whether a single mailing constitutes one violation or 3,550 is a question of law that no tribunal has ever decided, . . ." Ibid. Here, Respondent did not direct a "single mailing"; he directed 3,550 messages to be mailed. Therefore, the reframing of many violations as a single act is of no moment. Cf. Merin v. Maglaki, 126 N.J. 430, 435 (1992) (holding the Legislature's use of the term "any" in N.J.S.A. 17:33A-4 signals its intention to consider each violative act in a series of acts to be a single and distinct violation).

Because Respondent has not asserted a meritorious defense to the substantive charges against him, vacation of the final order would be futile as it would ultimately lead to the same outcome. See Marder v. Realty Constr. Co., 84 N.J. Super. 313, 318 (App. Div. 1964) ("[A] defendant seeking to reopen a default judgment must show that the neglect to answer was excusable under the circumstances and that he has a meritorious defense."). See also In re License Issued to Zahl, 186 N.J. 341, 354 (2006).

CONCLUSION

As Respondent's motion to vacate Final Order No. E16-56 is untimely, and because even if Respondent moved in time, his arguments are unmeritorious;

IT IS this 2nd day of October,

ORDERED, Respondent's motion to vacate Final Order No. E16-56 is DENIED.



Susan Ochs
Acting Commissioner

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