ORDER NO. E15- 49

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

AGENCY DOCKET NO. OTSC NO. E13-64

PROCEEDINGS BY THE COMMISSIONER OF BANKING AND INSURANCE, STATE OF NEW JERSEY TO FINE AND REVOKE THE INSURANCE PRODUCER LICENSES OF RICHARD CECERE & BUYER DEFENDER INC.,	))))))))	ORDER DENYING MOTION TO RECONSIDER OR STAY THE CIVIL PENALTY IMPOSED BY FINAL ORDER NO. E14-145

This matter comes before the Commissioner of the Department of Banking and Insurance ("the Commissioner") pursuant to a motion by the Respondent, Richard Cecere ("Cecere"), seeking reconsideration of civil penalties totaling $1,015,000 imposed by Final Order No. E14-145; and vacating the civil penalties and permitting Cecere to appear and be heard with regard to the mitigation of the penalties or, in the alternative, to stay enforcement of such order which: revoked Cecere's insurance producer license; revoked the expired license of Respondent Buyer Defender Inc. ("BDI"); ordered that Cecere and BDI pay $1,015,000 in fines and $1,375 in costs of investigation; and ordered that Cecere and BDI pay $79,086.21 in restitution to the New Jersey Title Insurance Company ("NJTIC"). For the reasons set forth below, the request to vacate the civil penalties and permit Cecere to appear and be heard with regard to the mitigation of the civil penalties is DENIED. Moreover, the request to stay the enforcement of the Final Order is DENIED.

PROCEDURAL HISTORY

On July 8, 2013, the Department of Banking and Insurance ("Department") issued Order to Show Cause No. E13-64 ("OTSC"). The OTSC alleged that Cecere and BDI (collectively "the Respondents") violated various provisions of the insurance laws of the State of New Jersey, including that Respondents misappropriated and commingled $79,086.21 in premium funds, made numerous record-keeping violations and failed to respond in writing to numerous Department requests for information. See Final Order No. E14-145, p. 1-5. In total, this five count OTSC charged the Respondent with two-hundred-three (203) separate and distinct insurance law violations. See Department's Opposition to Motion for Reconsideration dated January 23, 2015, p. 2.

By letter dated July 10, 2013, the Department, through its attorney, served a copy of OTSC No. E13-64 upon both Respondent Cecere and Respondent BDI via regular and certified mail, return receipt requested, at the last known home address for Cecere and at Respondents' last known business address, both of which were located in Montclair, New Jersey. See Certification of Deputy Attorney General Ryan S. Schaffer attached to the Final Order, ¶ 3-6.

Respondents did not submit an answer to the OTSC. Id. at ¶ 8; Cozzarelli Letter Brief, p.2; Cecere Certification, ¶ 9. On December 5, 2014, the Department issued Final Order No. E14-145 finding that, although proper notice of the charges provided an opportunity to oppose the allegations, Respondents failed to provide a written response to the charges contained in OTSC No. E13-64 within 20 days as provided by N.J.A.C. 11:17D-2.1(d). It was further ordered that Respondents waived their right to a hearing to contest the charges alleged in the OTSC and the charges were deemed admitted, pursuant to N.J.A.C. 11:17D-2.1(b). It was further ordered that, pursuant to N.J.S.A. 17:22A-40 and N.J.A.C. 11:17D-2.1(b)(2), the resident insurance

producer license of Respondent Cecere and the expired resident insurance producer license of Respondent BDI were revoked effective upon the execution of the Final Order. It was further ordered that, pursuant to N.J.S.A. 17:22A-45c, Respondent Cecere and Respondent BDI shall be responsible, jointly and severally, for the payment of civil penalties totaling $1,015,000 to the Commissioner for the violations contained in OTSC No. E13-64. This aggregate amount was determined as follows:

> $995,000 consisting of $5,000 for each of the 199 violations of the Producer Act, described in Count 1 and Count 2 of OTSC E13-64, for failing to timely remit premium funds collected for the issuance of 199 title insurance policies due to the insurer within the time frame prescribed by the agency agreement, and for the misappropriation or conversion, for their own use, of the premium funds totaling $79,086.21, which were received in the course of conducting insurance business, and for demonstrating incompetence, untrustworthiness and financial irresponsibility in the conduct of insurance business; and
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> $5,000 for violations of the Producer Act, described in Count 3 of OTSC No. E13-64, for failing to maintain a register containing relevant information regarding policies issued, premium fees collected and policy jackets, used or unused, and for demonstrating incompetence, untrustworthiness and financial irresponsibility in the conduct of insurance business; and
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> $5,000 for violations of the Producer Act, described in Count 4 of OTSC No. E13-64, for commingling premium funds, received in the course of conducting insurance business, with personal funds, and failing to deposit premium funds due NJTIC in an escrow account, and failing to hold these funds in a fiduciary capacity; and
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> $5,000 for violations of the Producer Act, described in Count 5 of OTSC No. E13-64, for failing to respond to two (2) Department inquiry letters, dated January 25, 2012, and March 26, 2012.
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> [Final Order No. E14-145, p. 10 – 12.]

It was further ordered that Respondents be responsible for reimbursement to the Commissioner of the costs of investigation totaling $1,375. Moreover, it was ordered that

Respondents make restitution to NJTIC in the total amount of $79,086.21 consisting of insurance premium due NJTIC.

By letter dated January 9, 2015, Cecere submitted the instant Motion for Reconsideration or Alternatively for Stay of Enforcement Pending Appeal. In this motion, Cecere seeks reconsideration and vacation of Final Order E14-145 with regard to its assessment of civil penalties totaling $1,015,000. Cecere further requests that he be allowed to appear and be heard with regard to mitigation of the civil penalties assessed. In the alternative, Cecere requests that Final Order No. E14-145 be stayed pending the outcome of Cecere's appeal of same. Cecere also requests such other relief as the Commissioner deems just and reasonable under the circumstances.

In support of the motion, Cecere's counsel submitted a letter brief and a Certification by Cecere. Cecere does not dispute that he received OTSC No. E13-64 or that he failed to respond in the 20 day timeframe established by the rules. In his certification dated January 8, 2015, he states as follows:

> When I asked [my friend and attorney] Frank to help me with the [OTSC], he said he would ask for a hearing. I know that he prepared some papers because I saw them. I thought that these papers were sent to the Commissioner but I gather the response to the [OTSC] was never properly sent or did not arrive at the Commissioner's office. When I got the December 10, 2014 Final Order I was destroyed. I thought we had requested a hearing but I was mistaken. [Cecere Certification, ¶9.]

Cecere admits that premium remittances in the amount of $79,086.21 to NJTIC were not made, and that there is an obligation to pay it back. Cecere Certification, ¶11. He does not dispute the revocation of his license, or the assessment of the Department's costs of investigation.

Cecere's attorney, Mr. Cozzarelli, also admits to receiving the OTSC. In the letter brief filed in support of the pending motions in the alternative, Mr. Cozzarelli states the following:

> [Cecere] requested this office to file papers on his behalf to request a hearing. We drafted a response to the [OTSC] but it was never sent. When the final order was entered on December 10, 2014 imposing a civil penalty against [Cecere] he brought it to my attention. I thought we filed the papers to request a hearing on the [OTSC]. Due to my own personal problems, I neglected this matter. [Cozzarelli Letter Brief, p.1.]

Cecere argues that Final Order E14-145 should be reconsidered, pursuant to R. 4:50-1, which provides multiple grounds for a party to be relieved from judgment. Citing Mancini v. EDS, he argues that the rule is "designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." 132 N.J. 330, 334 (1993) (quoting Baumann v. Marinaro, 95 N.J. 380, 302 (1984)).

Cecere also avers that the civil penalty in the amount of $1,015,000 under the circumstances of this case is excessive, unduly punitive and violative of substantive due process. Moreover, Cecere cites to a three part test outlined in BMW of N. Am., Inc., v. Gore, 517 U.S. 559 (1996). He specifically notes that in BMW, "the Supreme Court held that a punitive damages award may be so excessive as to violate substantive due process." (Cozzarelli Letter Brief, p.2 citing BMW, supra at 585-86). In BMW, the Court concluded that a $2 million punitive damages award for misconduct causing $4,000 in compensatory damages transcended the constitutional limit and ultimately remanded the matter for consideration of the three guideposts to determine whether the award comported with principles of fairness. Id. at 567; 585-86. Those guideposts required consideration of: (1) the degree of reprehensibility of the conduct that formed the basis of the civil suit; (2) the disparity between the harm or potential harm suffered by the plaintiff and the plaintiff's punitive damages award; and (3) the difference

between this remedy and other penalties authorized or imposed in comparable cases of misconduct. Id. at 575.

Cecere further attests that he is 67 years old and suffered one heart attack and two strokes over the course of the past five years. Cecere Certification, ¶ 2. He further attests he has "not been functioning very well over these past years" and has "been overwhelmed due to very bad physical problems and very bad business problems." Id. at ¶ 4. Moreover, he asserts that, he is living on Social Security of about $1,400 per month and has a reverse mortgage. Id. at ¶ 10. He does not deny that "remittances in the amount of $79,086.21 were not made." Id. at ¶ 11.

Cecere also ascribed some of his problems to an ongoing legal feud with his landlord since 2009. Id. at ¶ 4. He further described that, "[b]etween the ongoing litigation with the landlord, who is trying to strip me of my assets for no legitimate reason and given my poor health I could not face another legal controversy without it mentally destroying me." Id. at ¶4-5.

The Department opposed Cecere's motion arguing that Respondent Cecere waived his right to a hearing by failing to answer the OTSC even though he admits to receiving the OTSC. Moreover, the Department maintains that no grounds exist for the Commissioner to vacate the Final Decision or grant leave to Cecere to seek reconsideration. The Department avers that Respondent Cecere failed to satisfy the well-established standard for reconsideration of an Administrative Agency Final Order and noted that the power of a Commissioner to reopen, modify, or rehear orders previously entered should be invoked only for good cause shown. Duvin v. State, Dep't of Treasury, Public Employees' Retirement System, 76 N.J. 203, 207 (1978) (citing Burl. Cty. Ch Evergreen Pk. Mental Hosp. v. Cooper, 56 N.J. 579 (1970)). The Department also argues that Cecere's arguments of excusable neglect, pursuant to R. 4:50-1(a) and Respondent's argument that the penalty amount is excessive fail as a matter of law.

Moreover, with respect to penalty, the Department argued that BMW, supra, is not applicable to the facts herein as that case concerns a tort matter involving excessive punitive damages awarded to an individual plaintiff. The Department noted that the insurance business is strongly affected with a public interest and the Commissioner is charged with the duty to protect the public welfare. Sheeran v. Nationwide Mut. Ins. Co., 80 N.J. 548, 559 (1979) (internal citations omitted). The Department further noted that the Insurance Producer Licensing Act of 2001 (N.J.S.A. 17:22A-26, et seq.) ("the Producer Act") serves a remedial purpose. Commissioner v. Furman, OAL Dkt. No. BKI 3891-06. Initial Decision, 2007 N.J. Agen. Lexis 461 (June 21, 2007), Final Decision Order No. E07-76, 2007 N.J. Agen. Lexis 994 (September 17, 2007). Additionally, the Department averred that the Commissioner may assess a penalty for each separate violation of the Producer Act. Commissioner v. R&J Associates, et al. OAL Dkt. No. BKI 2056-98, Initial Decision, 2000 N.J. Agen. Lexis 389 (July 2, 2004), Final Decision Order No. E-04-148, 2004 N.J. Agen. Lexis 1502 (November 17, 2004), aff'd, App. Div. Dkt. No. A-1903-04T3 (2006).

LEGAL DISCUSSION

A) Vacation of Civil Penalty:

Cecere has failed to satisfy the legal standard necessary to vacate a judgment and, therefore, Cecere's request to vacate the civil penalty imposed by Final Order No. E14-145, to file an Answer and to have a hearing with regard to the amount of the civil penalty is DENIED. Moreover, Cecere has failed to set forth grounds upon which a stay should be granted and therefore his request for a stay is DENIED.

It is well-settled that the Commissioner has the inherent power to reopen and reconsider his decisions as well as correct his own judgments. Duvin v. State, 76 N.J. 203 (1978). While

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

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

R. 4:50-1 provides the following guidance in determining whether to provide relief from a Final Order:

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

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

In considering subparagraph (a) in the rule, the New Jersey Supreme Court has noted that: "The four identified categories…when read together, as they must be, reveal an intent by the drafters to encompass situations in which a party, through no fault of its own, has engaged in erroneous conduct or reached a mistaken judgment on a material point at issue in the litigation." DEG, LLC v. Township of Fairfield, 198 N.J. 242, 262 (2009). Moreover, the mistakes contemplated under the rule are intended to provide relief to a party from litigation errors that a party could not have protected against. Id. at 263. "A party who simply misunderstands or fails to predict the legal consequences of his deliberate acts cannot later, once the lesson is learned, turn back the clock to undo those mistakes." Ibid. Additionally, "[e]xcusable neglect may be found when the default was attributable to an honest mistake that is compatible with due diligence or reasonable prudence." US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 468 (2012) (citing Mancini v. EDS, et al, 132 N.J. 330 (1993)). "Mere carelessness or lack of proper diligence on the part of an attorney is ordinarily not sufficient to entitle his clients to relief from an adverse judgment in a civil action." Baumann v. Marinaro, supra. at 394 (citing In re T, 95 N.J. Super. 228, 235 (App. Div. 1967)). Moreover, R. 4:50-1(f) authorizes relief from judgments "only when truly exceptional circumstances are present." Id. at 395 (quoting Manning Eng'g, Inc. v. Hudson County Park Com'n, 74 N.J. 113, 120 (1997)).

With this analogous rule and precedent in mind, I herein find that Cecere has not established grounds to be relieved from the Final Order. First, Cecere has failed to demonstrate that the Final Order was based upon a palpably incorrect or irrational basis or that there was a failure to consider, or appreciate the significance of probative, competent evidence. Cecere simply argues that his attorney, Mr. Cozzarelli, made a mistake by failing to file an answer to the

OTSC and that he should be given another bite at the apple. Notably, Cecere, in his own certification, admits that he was exhausted from his involvement in another litigation with his landlord that has been ongoing since 2009. Clearly, he was active and involved in that litigation and was aware of his rights and obligations as a litigant but failed to actively participate in this matter. This failure on Cecere's part, however, does not constitute a basis for reconsideration of the Final Order.

Additionally, as discussed in full below, Cecere has failed to demonstrate excusable neglect or that his failure to answer constitutes "exceptional circumstances" to warrant relief from the provisions of the default Final Order.

Cecere cites excusable neglect on the part of his attorney to support his motion to vacate the Final Decision pursuant to R. 4:50-1 and for reconsideration. His submissions on the motion emphasize how, although having prepared a response to the OTSC which was served upon the Respondents in or about July 2013, Mr. Cozzarelli failed to send in the answer and only became aware of this mistake in December 2014, almost a year and a half later, when the Final Order was issued which ordered substantial fines. However, no explanation is offered as to what happened during the 16 months or so in between. This type of mistake made by an attorney does not constitute excusable neglect, nor does it constitute exceptional circumstances. Additionally, there is no adequate explanation as to why Cecere did not follow up or at least inquire of his attorney as to the status of the case. For these reasons, Cecere fails to satisfy the standard set forth in R. 4:50-1(a) and (f). See Baumann v. Marinaro, supra. at 394 (citing In re T, 95 N.J. Super. 228, 235 (App. Div. 1967)).

Generally, an application to vacate a default judgment is "viewed with great liberality and every reasonable ground for indulgence is tolerated to the end that a just result is reached."

Marder v. Realty Construction Co., 84 N.J. Super. 313, 319 (App. Div.), aff'd 43 N.J. 508 (1964). See also Morristown Housing Authority v. Little, 135 N.J. 274, 283-284 (1994); Mancini, 132 N.J. at 332. Nevertheless, a default judgment will not be disturbed unless the failure to answer or otherwise appear and defend was excusable under the circumstances and unless the defendant has a meritorious defense; either to the cause of action itself, or, if liability is not disputed, to the quantum of damages assessed. U.S. Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 468-469.

As discussed above, Cecere has not demonstrated that his failure to answer was excusable under the circumstances. Additionally, he has not established a meritorious defense or mitigation necessary to vacate the civil penalty imposed by Final Order No. E14-145. Specifically, Cecere attempts to assert that he has a limited ability to pay the penalty imposed; however, he provides no proof or evidence in this regard. Moreover, a limited ability to pay is only one of several factors to be considered when assessing administrative monetary penalties such as those that may be imposed pursuant to N.J.S.A. 17:22A-45 upon insurance producers. The factors include: (1) the good faith or bad of the violator; (2) the violator's ability to pay; (3) the amount of profit obtained from the illegal activity; (4) injury to the public; (5) duration of the illegal conduct; (6) existence of criminal actions and whether a large civil penalty may be unduly punitive if other sanctions have been imposed; and (7) past violations. Kimmelman v. Henkles & McCoy, Inc., 108 N.J. 123, 137-39 (1987). For example, in Goldman v. Erwin, although insurance producer Erwin demonstrated an inability to pay, the Commissioner considered this factor in conjunction with the other six Kimmelman factors when imposing a single total fine of $100,000. OAL Dkt. No. BKI 4573-06, 2007 N.J. Agen. Lexis 995, Final Decision Order No. 06-72 (September 17, 2007). Similarly, in Bryan v. Malek, the Commissioner found that,

although Respondent's ability to pay mitigated in favor a minimal penalty, all of the other factors were aggravating in nature and therefore compelled the imposition of a substantial penalty of $20,000. OAL Dkt. Nos. 4520-05 and 4686-05, 2006 N.J. Agen. Lexis 92, Final Decision No. E06-12 (January 18, 2006). Therefore, an inability to pay, even if demonstrated, is only one factor and can be outweighed by other factors.

B) Stay Pending Appeal:

Additionally, Cecere has failed to establish grounds for granting a stay pending appeal. Specifically, Cecere has failed to demonstrate any probability of success on the merits on the underlying matter, the existence of irreparable harm, or the absence of any harm to the public. In fact, Cecere has advanced no argument in this regard.

It is well settled that the movant has the burden of establishing by clear and convincing evidence that a stay should be granted. American Employers' Ins. Co. v. Elf Atochem N.A., Inc., 280 N.J. Super. 601, 611 n8 (App. Div. 1995); Subcarrier Communications, Inc. v. Day, 299 N.J. Super. 634, 639 (App. Div. 1999) (citing American Employers' Ins. Co., supra). In this application, Cecere has failed to recite facts in the moving papers that fulfill the legal requirements that must be met in order to grant the relief requested.

A stay pending appeal of a final administrative decision is an extraordinary equitable remedy involving the most sensitive exercise of judicial discretion. See Crowe v. DeGioia, 90 N.J. 126, 132 (1982); Zoning Bd. of Adjustment v. Service Elec. Cable Television of N.J., Inc., 198 N.J. Super. 370, 379 (App. Div. 1985). It is not a matter of right, even though irreparable injury may otherwise result. Yakus v. United States, 321 U.S. 414 (1944); In re Haberman Manufacturing Company, 147 U.S. 525, 440, (1893). Because it is the exception rather than the rule, GTE Corp. v. Williams, 731 F.2d 676, 678 (10th Cir. 1984), the party seeking such relief

must clearly carry the burden of persuasion as to all the prerequisites. United States v. Lambert, 695 F.2d 536, 539 (11th Cir. 1983). Granting a stay pending appeal is the exercise of an extremely far-reaching power, one not to be indulged in except in a case in which it is clearly warranted.

Such relief is appropriate only in instances where the party seeking this extraordinary measure demonstrates that each of the following conditions has been satisfied: 1) a reasonable probability of success on the merits of the underlying appeal; 2) the public interest will be served by the stay, or that on balance, the benefit of the relief to the movant will outweigh the harm such relief will cause other interested parties, including the general public; and 3) irreparable injury will result if a stay is denied. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982). Here, Cecere has failed to carry his burden of demonstrating facts that establish any of the three Crowe prerequisites for the issuance of a stay.

First, Cecere does not advance any arguments as to the reasonable probability of success on the merits of the underlying matter as to the Department's allegations against Cecere. He does not seek a hearing as to liability, nor does Cecere advance any argument as to the likelihood of prevailing as to the issue of penalty. However, in support of his motion for reconsideration, Cecere avers that that the civil penalty assessed by the Commissioner is excessive under the circumstances of this case, unduly punitive, and violates substantive due process. (Cozzarelli Letter Brief, p.2).

The failure of Cecere to demonstrate a reasonable probability on the merits of an appeal is dispositive, because a failure of a movant to establish all three Crowe factors through clear and convincing evidence shall result in a denial of a stay request. Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012); Subcarrier Communications, Inc. v. Day, 299 N.J. Super.

634, 638 (App. Div. 1997) ("to prevail on an application for temporary relief, a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits.") Notwithstanding Cecere's failure to substantively address this factor, the facts as outlined in the Order demonstrate that there was substantial credible evidence in the record to support the factual findings and legal conclusions set forth in the Order.

Here, the assessment of $1,015,000 against Cecere was well within the statutory authority. The Commissioner may assess a penalty for each separate violation of the Producer Act. See Commissioner v. R&J Associates, et al. OAL Dkt. No. BKI 2056-98, Initial Decision, 2000 N.J. Agen. Lexis 68 (February 14, 2000), Final Decision Order No. E-00-63, 2000 N.J. Agen. Lexis 1573 (March 31, 2000), aff'd, App. Div. Dkt. No. A-4904-99 (2011) (submission of 111 bad checks resulted in a penalty for 111 separate violations). Here, Cecere committed 203 separate violations of the Producer Act. The Commissioner is authorized to levy a $5,000 penalty for the first offense and a penalty not exceeding $10,000 for each subsequent offense. See N.J.S.A. 17:22A-45c. Here, the maximum penalty that could have been imposed is $2,025,000. Instead, a total penalty of $1,015,000 was imposed.

This penalty comports with those imposed in prior similar cases. The Commissioner has consistently assessed a substantial penalty when multiple violations of the Insurance Producer Act have occurred. See Commissioner v. R&J Associates, supra; Commissioner v. Capital Bonding, OAL Dkt. No. BKI 6793-01, Initial Decision, 2004 N.J. Agen. Lexis 389 (July 2, 2004), Final Decision Order No. E-04-148, 2004 N.J. Agen. Lexis 1502 (November 17, 2004), aff'd, App. Div. Dkt. No. A-1903-04T3 (2006) (Commissioner imposed fines of $207,000 relating to 51 violations plus $1,000,000 for 747 unpaid judgments). Additionally, as the Department correctly asserts, Cecere's reliance upon BMW, supra, is misguided as BMW is a

tort case that involved excessive punitive damages. Courts have long recognized that the insurance industry is strongly affected with the public interest and that the Commissioner is charged with the duty to protect the public welfare. See, e.g., Sheeran v. Nationwide Mutual Ins. Co., supra. Moreover, the Producer Act serves a remedial purpose. Commissioner v. Furman, OAL Dkt. No. BKI 3891-06. Initial Decision, 2007 N.J. Agen. Lexis 461 (June 21, 2007), Final Decision Order No. E07-76, 2007 N.J. Agen. Lexis 994 (September 17, 2007). Here, the Commissioner's imposition of a $1,015,000 penalty was well within the statutory authority and rationally based upon a calculation of the number of violations. Not only did Cecere admit to the 203 separate violations of the Producer Act, the Commissioner acted well within his authority to levy a $5,000 penalty for each violation. Therefore, Cecere has failed to establish, under the first Crowe factor, that he is likely to succeed on the merits regarding his arguments as to penalty.

Moreover, Cecere has failed to establish that the public interest will be served by the stay, or that on balance, the benefit of the relief to the movant will outweigh the harm such relief will cause other interested parties, including the general public. Ultimately, a balancing of the equities weighs in favor of allowing the Final Decision to remain effective pending appeal. While it is true that Cecere's financial interests will be negatively impacted by the fines and revocation, courts have long recognized that the insurance industry is strongly affected with the public interest and that the Commissioner is charged with the duty to protect the public welfare. See, e.g., Sheeran v. Nationwide Mutual Ins. Co., 80 N.J. 548, 559 (1979). Cecere's failure to make remittances of insurance premiums compelled the revocation of his insurance producer license and the imposition of substantial monetary penalties in order to protect the public from the pernicious effects of malfeasance in the insurance industry. The need to do so outweighs the pecuniary impact upon Cecere of denying his motion.

Lastly, Cecere has failed to demonstrate that irreparable harm will result if a stay is denied. The imposition of $1,015,000 in fines is a substantial penalty. However, irreparable injury is not demonstrated solely by the potential loss of money. Courts have consistently held that the loss of income or pecuniary harm does not constitute irreparable harm for purposes of obtaining an interlocutory injunction. Board of Educ. of Union Beach v. New Jersey Educ. Ass'n, 96 N.J. Super. 371, 390 (Ch. Div. 1967), aff'd, 53 N.J. 29 (1968). "Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough." Zoning Bd. of Adjustment, supra, 198 N.J. Super. at 381 (quoting Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n, 259 F. 2d 921, 925 (D.C. Cir.1958). Here, the financial hardship claimed does not rise to the level of irreparable injury required by the courts to grant injunctive relief. Crowe, supra, 90 N.J. at 130 and 133.

CONCLUSION

As set forth above, Cecere has not demonstrated good cause to support the entry of an order reconsidering or vacating the Final Order No. E14-145 or to stay the penalty imposed by Final Order No. E14-145. Accordingly, Cecere's motion is DENIED.

May 11, 2015
Dated

Kenneth E. Kobylowski,
Commissioner

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