

Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -30 ("Fraud Act"), specifically N.J.S.A. 17:33A-4(a)(1), N.J.S.A. 17:33A - 4(a)(3)(a), N.J.S.A. 17:33A -4(a)(3)(b), N.J.S.A. 17:33A-(4)(a)(4)(a), N.J.S.A. 17:33A -4(a)(4)(b), and N.J.S.A. 17:33A - 4(a)(5), knowingly provided false and misleading statements on an application for automobile insurance to Nationwide Insurance Company ("Nationwide") by falsely stating that her primary residence and principle garaged location for her insured vehicles was in West Virginia, when in fact she resided in and garaged the insured vehicles in New Jersey, in violation of the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -30 ("Fraud Act"); and

FINAL JUDGMENT is on this 12th day of May, 2023,
 entered in the amount of \$~~11,080.00~~^{6,280.00} against Defendant Tina Ferrant and in favor of Plaintiff, Marlene Caride, Commissioner of the New Jersey Department of Banking and Insurance. This amount consists of: a ~~\$5,000.00~~^{200.00} civil penalty for two violations of the Fraud Act, pursuant to N.J.S.A. 17:33A-5(b); attorneys' fees of \$5,000.00, pursuant to N.J.S.A. 17:33A-5(b); cost of service in the amount of \$80.00, pursuant to N.J.S.A. 17:33A-5(b); and a statutory fraud surcharge of \$1,000.00 pursuant to N.J.S.A. 17:33A-5.1; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 39:6A-15, Defendant's driving privileges shall be suspended for a period

of one year from the date of this judgment; and

IT IS FURTHER ORDERED, that a copy of this Order be served upon all parties within 7 days of the date of receipt.

/s/
Timothy W. Chell, P.J. Cv.
J.S.C.

This motion was:

Opposed

Unopposed

Findings

In Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995), the New Jersey Supreme Court explained the summary judgment standard as follows: "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 presented, when viewed in the light most 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. The judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." It should be kept in mind that the mere existence of issues of fact does not preclude summary judgment unless a view of those facts most favorable to the opposing party adequately grounds some claim for relief. Bilotti v. Acurate Forming Corp., 39 N.J. 184 (1963).

In Brill, the Supreme Court of New Jersey adopted the standard for summary judgment used by the Federal Courts. The Brill Court instructed the motion judge to engage in an analytical process essentially the same as that necessary to rule on a motion for directed verdict: "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 536. The Brill Court emphasized

that the thrust of its decision is “to encourage trial courts not to refrain from granting summary judgment when the proper circumstances present themselves.” Id. at 541.

1. Fraud Act

Plaintiff alleges that Ms. Ferrant violated the Fraud Act under N.J.S.A. 17:33A-4a(4)(b) and when she knowingly presented false statements in support of an application for an insurance policy. See Pl. Mot. for Summ. J., p. 4. The statute states that an individual violates the Fraud act when they:

Prepares or makes any written or oral statement, intended to be presented to any insurance company or producer for the purpose of obtaining:

...

an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to an insurance application or contract

N.J.S.A. § 17:33A-4a(4) - (b). In addition, Plaintiff alleges Ms. Ferrant violated the Fraud Act under N.J.S.A. 17:33A-4(a)(1). The statute that an individual violates the Fraud act when they:

Presents or causes to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy or the “Unsatisfied Claim and Judgment Fund Law,” P.L.1952, c.174 (C.39:6-61 et seq.), knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim

N.J.S.A. § 17:33A-4(a)(1). Plaintiff alleges that Ms. Ferrant resided at 2002 Delsea Drive, Franklinville, New Jersey but misrepresented to her insurance carrier that she was living at 978 Gaines Road, Rock Cave, West Virginia. Id. This was done in a conversation Ms. Ferrant had with Nationwide Insurance Representative James Highberger (hereinafter NR) where the conversation went as follows:

NR: Okay and your home address?

TF: 978 Gaines Road West Virginia...Rock Cave, West Virginia 26234.

NR: Okay and how long have you been living there?

TF: A couple of years.

See Pl. Mot. to Enter J., Ex. E. p. 2.

In doing so, Ms. Ferrant was alleging to her insurance carrier that she lived in West Virginia. The conversation followed when Mr. Highberger asked Ms. Ferrant where she worked which went as follows:

NR: Okay, but I mean are you employed anywhere right now?
TF: Right now I'm working at...I just started at this Denny's down here.
NR: Denny's in West Virginia?
TF: Down in Vineland, I'm trying to move down this way.
NR: When you say, "Down this way," what do you mean?
TF: Like the New Jersey area.
NR: Okay, so are you working in New Jersey or West Virginia?
TF: Yeah, I just came out this way in New Jersey.
NR: Okay, so you have a job in New Jersey then?
TF: Yeah, I just got this job, yeah.
NR: Okay and now are you in process of relocating to New Jersey then?
TF: Yeah.
NR: Okay but you're still, I guess, living in (I/A)
TF: I didn't . . .
NR: You haven't moved yet?
TF: Yeah, I'm still there I got to go get my stuff and...

Id. at 4.

Ms. Ferrant does not dispute that she made the statement. Rather, she claims that she was an add on policy holder and thus did not sign any documents stating she was the policy holder. However, Mr. Highberger asked Ms. Ferrant who was the policy holder of the vehicle involved in the accident to which she replied:

NR: Okay and this vehicle it's registered in your name only?
TF: Yeah, it's registered in my name and my mom's name.
NR: Okay.

Therefore, for purposes of the statute Ms. Ferrant does not deny that she made an oral statement over the phone to Mr. Highberger for the purpose of obtaining an insurance policy knowing that the statement contains any false or misleading information concerning any fact or thing material to an insurance application or contract. The statement was false because Ms. Ferrant was living at 2002 Delsea Drive, Franklinville, New Jersey and working at Denny's in Vineland; two statements she does not dispute. As there is no genuine issue of material fact because Ms. Ferrant does not dispute that she violated N.J.S.A. 17:33A-4a(4)(b) nor N.J.S.A. 17:33A-4(a)(1), the Court finds that Ms. Ferrant violated the statute.

2. Penalty Amount per N.J.S.A. 17:33A-5(b)

Plaintiff seeks a penalty against the Defendant in the sum of \$5,000 for violation of N.J.S.A. 17:33A-5(b). The statute states:

Any person who violates any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) shall be liable, in a civil action brought by the commissioner in a court of competent jurisdiction, for a penalty of not more than \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for each subsequent violation, provided that if the person violates section 4 of P.L.1983, c.320 (C.17:33A-4) the penalty shall be \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for each subsequent violation. The penalty shall be paid to the commissioner to be used in accordance with subsection e. of this section. The court shall also award court costs and reasonable attorneys' fees to the commissioner.

N.J.S.A. § 17:33A-5(b). The factors relevant to determining the penalty calculation is: (1) The good or bad faith of defendant; (2) Defendant's ability to pay; (3) Amount of profits obtained from illegal activity; (4) Injury to the public; (5) Duration of the conspiracy; (6) Existence of criminal or treble damages actions; and (7) Past violations. Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123, 137-39 (1987). Plaintiff alleges Ms. Ferrant violated factors one, three, four and five.

The Court does find that Ms. Ferrant did engage in bad faith. Ms. Ferrant knowingly misrepresented that her car was garaged in West Virginia when in fact the car was located in New Jersey. Ms. Ferrant does not dispute this and thus factor one weighs in favor of a civil penalty. Factor two addressed defendant's ability to pay. The court finds this factor, based upon Ms. Ferrant's submissions weighs strongly in favor of a low civil penalty. The Court finds that factor three, amount of profits obtained from the illegal activity, is established. However, the court finds the profits were minimal and therefore this factor weighs in favor of allow civil penalty. Ms. Ferrant made an insurance claim with the intention of obtaining relief from her car accident. When making the claim, and giving dishonest answers of where the car was garaged, Ms. Ferrant engaged in an illegal activity. The Court finds factor four, the injury to the public, is established, and therefore weighs this factor in favor of a small civil penalty. Plaintiff alleges insurance fraud cause an injury to the public because it drives up premiums and forces insurance companies to expend money on investigations and the court agrees. Finally, the Court finds the fifth factor, duration of the conspiracy, is limited as the duration was short when Ms. Ferrant improperly made a claim under her insurance policy.

The Court finds after weighing the factors a civil penalty much less than the \$5000 maximum is appropriate. The court most strongly weighs the defendants ability to pay which will no doubt be severely impacted by the loss of license that will be entered by this order. The statute directs the Court to not apply a civil penalty of more than \$5,000 for the first violation. As such, this Court views the statute in its plain meaning and views it as giving the Court discretion to determine a penalty that can only not exceed more than \$5,000. The Court views a \$5,000 fine to be excessive in this instance. The Court finds that while Ms. Ferrant violated both N.J.S.A. 17:33A-4a(4)(b) and N.J.S.A. 17:33A-4(a)(1), the Court does not find it

so severe to award what the Court views as the maximum penalty for a first-time violation; albeit with one which could be considered a second violation. As such, the Court finds a penalty in the amount of \$200 to be more appropriate.

3. \$1,000 surcharge under N.J.S.A. 17:33A-5.1

Plaintiff alleges they are entitled to a \$1,000 mandatory surcharge under N.J.S.A. 17:33A-5.1. The statute states "In addition to any other penalty, fine or charge imposed pursuant to law, a person who is found in any legal proceeding to have committed insurance fraud shall be subject to a surcharge in the amount of \$1,000". As the Court has established Ms. Ferrant committed insurance fraud through violating N.J.S.A. 17:33A-4a(4)(b) and N.J.S.A. 17:33A-4(a)(1), the Court finds the \$1,000 surcharge is to be imposed.

4. Attorney Fees

Plaintiff alleges they are entitled to attorney fees under N.J.S.A. 17:33A-5(b). The statute, as previously cited, stated:

Any person who violates any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) shall be liable, in a civil action brought by the commissioner in a court of competent jurisdiction, for a penalty of not more than \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for each subsequent violation, provided that if the person violates section 4 of P.L.1983, c.320 (C.17:33A-4) the penalty shall be \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for each subsequent violation. The penalty shall be paid to the commissioner to be used in accordance with subsection e. of this section. *The court shall also award court costs and reasonable attorneys' fees to the commissioner.*

N.J.S.A. § 17:33A-5(b) (*emphasis added*). When, as here, there is explicit legal authority for the court to award counsel fees, the court calculates the award of counsel fees by determining the "lodestar," i.e. a reasonable hourly charge multiplied by the number of hours expended. In re Prob. of Will & Codicil of Macool, 416 N.J. Super. 298, 313 (App. Div. 2010). In determining the lodestar, the court should compare the hourly rate of the attorney to the rates charged for similar services of attorneys in the community with "comparable skill, experience, and reputation." Id.

Here, Plaintiff seeks \$5,000 for attorney fees and \$80 for the cost of service. Plaintiff asserts Julie Burk, an attorney assistant, expended 10.8 hours on this matter at a rate of \$150 an hour for a total amount of \$1,620. Plaintiff asserts Anna M. Lascurain, a deputy attorney general, spent 45 hours on this matter at a rate of \$260 an hour for a total amount of \$11,700. Finally, Plaintiff asserts Richard Wegryn, a deputy attorney general, spent 4.8 hours at a rate of \$300 an hour for a total amount of \$1,440. In total, this would lead to a charge against Ms. Ferrant of \$14,760. Ms. Ferrant disputes this amount by alleging the filings by Plaintiff are incorrect and

thus does not deserve reimbursement. Conversely, Ms. Ferrant provides no facts to dispute any claim that she made false statements to her insurance provider in an attempt to policy benefits for the accident she was involved in.

This Court finds for the amount of preparation and time spent on filing the complaint, motion to enter judgment, motion to enter default judgment, oppositions/replies, and motion for summary judgment that a counsel fee award of \$5,080 is reasonable and appropriate.

5. License

The court finds that under N.J.S.A. 39:6A-15 any individual who violates the fraud act must lose their license to operate a motor vehicle over the highways of the state of New Jersey for one year. The statute reads in part as:

In addition to any penalties imposed by law, any person who is either found by a court of competent jurisdiction to have violated any provision of P.L.1983 c.320 (C.17:33A-1 et seq.) pertaining to automobile insurance or been convicted of any violation of Title 2C of the New Jersey Statutes arising out of automobile insurance fraud based on a claim for damages arising out of a motor vehicle accident ***shall not operate a motor vehicle over the highways of this State for a period of one year from the date of judgment or conviction.***

N.J.S.A. § 39:6A-15 (emphasis added). Ms. Ferrant asks this Court not to take away her license because she a single of mother of three children that is trying to do the best that she can. This Court does not take lightly the action of imposing a penalty that prevents Ms. Ferrant from driving on the highways of this state for a year. However, the statute is clear and the court must accept the plain meaning of the statute. Those who commit a violation of the New Jersey Insurance Fraud Prevention Act must face such a penalty. The statute does not provide this Court with discretion on an imposition of the penalty. This Court cannot circumvent this statute and as such must enforce a penalty that prohibits Ms. Ferrant from driving on the highways of New Jersey for one year.

Finally, this Court wants to stress to Ms. Ferrant that this is a civil matter. This Court has previously informed her of such but her opposition to this motion continues to imply that she does not understand why the Plaintiff's have brought a claim against her. Due to Ms. Ferrant being pro se this Court finds it important to stress to Ms. Ferrant that entering into a pre-trial intervention did not prevent the Plaintiff from bringing their civil claims. The Court also cannot force the Plaintiff to take any payment plan Ms. Ferrant offered. Trying to resolve the issue amicably, while preferred by the Court, does not reflect negatively on either party and has no bearing on this motion. This motion instead asked one simple question per each section: Is there existence of a genuine issue of material fact that precludes summary judgment when looking at the facts viewed in the light most favorable to the non-moving party? This Court finds there is no

such a factual dispute in this record even when looking at the facts in a light that is most favorable to defendant.

For these reasons the Court grants the motion for summary judgment and awards judgment against defendant in the total amount of \$6,280.

ORDER OF THE COURT

Therefore, the Motion for Summary Judgment is **GRANTED**.