

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of Banking)
and Insurance, State of New Jersey, to fine,)
suspend and/or revoke the insurance license of)
Heinz Cherilus, Reference No. 1609539.)
_____)

ORDER TO SHOW CAUSE

TO: Heinz Cherilus
70 Buckley Hill Drive
Phillipsburg, New Jersey 08865

THIS MATTER, having been opened by the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon information that Heinz Cherilus (“Respondent”), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, at all relevant times, Respondent was licensed as a resident individual insurance producer in the State of New Jersey pursuant to N.J.S.A.17:22A-32(a), until his license expired on April 30, 2018; and

WHEREAS, Respondent is subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48 (“Producer Act”) and the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -30 (“Fraud Act”); and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(d), the Commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by the Producer Act and Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes against any person who is under investigation for or charged with a violation of the Producer Act of Title 17 of the Revised

Statutes or Title 17B of the New Jersey Statutes even if the person's license or registration has been surrendered or has lapsed by operation of law; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(2), an insurance producer shall not violate any insurance law, regulation, subpoena or order of the Commissioner or of another state's insurance regulator; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(8), an insurance producer shall not use any fraudulent, coercive, or dishonest practices, or demonstrate incompetence or untrustworthiness in the conduct of insurance business; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(16), an insurance producer shall not commit any fraudulent act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a), the Commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license for violating the Producer Act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45(c), any person violating the Producer Act is subject to a penalty not exceeding \$5,000.00 for the first offense and not exceeding \$10,000.00 for each subsequent offense; additionally, the Commissioner may order restitution of moneys owed any person and reimbursement of costs of the investigation and prosecution; and

WHEREAS, pursuant to N.J.S.A. 17:33A-4(a)(1), it is a violation of the Fraud Act to present or cause to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim; and

WHEREAS, pursuant to N.J.S.A. 17:33A-4(a)(3), no person shall conceal or knowingly fail to disclose the occurrence of any event which affects any person's initial or continued right or

entitlement to (a) any insurance benefit or payment or (b) the amount of any benefit or payment to which the person is entitled; and

WHEREAS, pursuant to N.J.S.A. 17:33A-5(a) and (c), violations of the Fraud Act subject the violator to a civil and administrative penalty not to exceed \$5,000.00 for the first offense, not to exceed \$10,000.00 for the second offense and not to exceed \$15,000.00 for each subsequent offense; moreover, the Commissioner may issue a final order recovering costs of prosecution, including attorneys' fees, in accordance with N.J.A.C. 11:16-7.9(c); and

WHEREAS, pursuant to N.J.S.A. 17:33A-5.1, any person who is found in any legal proceeding to have committed insurance fraud shall be subject to a surcharge in the amount of \$1,000.00; and

ALLEGATIONS COMMON TO ALL COUNTS

IT APPEARING, that on April 25, 2016, Respondent became a licensed insurance producer in the State of New Jersey; and

IT FURTHER APPEARING, that at all relevant times, Respondent was the owner of a 2005 Honda Civic with a vehicle identification number ending in 7846; and

IT FURTHER APPEARING, that on or about May 9, 2017, at approximately 11:00 p.m., Respondent was involved in an automobile accident when another vehicle backed into Respondent's Honda while it was parked; and

IT FURTHER APPEARING, that the accident was not reported to the police, and no police report was issued; and

IT FURTHER APPEARING, that at the time of the accident, Respondent's 2005 Honda was uninsured; and

IT FURTHER APPEARING, that on May 19, 2017, Respondent applied to Esurance for

automobile insurance coverage for his 2005 Honda, which became effective on that date; and

IT FURTHER APPEARING, that on May 20, 2017, Respondent filed with Esurance a claim for insurance benefits under his automobile insurance policy for an accident which he falsely reported as having occurred on May 20, 2017, at approximately 6:00 a.m. or 7:00 a.m. while sitting in his parked vehicle with his brother; and

IT FURTHER APPEARING, that on or about June 6, 2017, Esurance sent a Reservation of Rights letter to Respondent requesting additional information to complete its investigation of the accident, including proof of cancellation of his prior Progressive insurance policy, photos he took at the scene of the accident, contact information for the third party, maintenance records for the 2005 Honda, cell phone records including text messaging information, and his brother's contact information; and

IT FURTHER APPEARING, that on or about June 6, 2017, Respondent emailed Esurance photographs of the rear damage to his 2005 Honda; and

IT FURTHER APPEARING that, Esurance's investigation and review of the metadata of the photographs revealed the photographs were taken on May 10, 2017; and

IT FURTHER APPEARING, that on or about July 11, 2017, an Esurance representative met with the third party involved in the accident; and

IT FURTHER APPEARING, that during the recorded conversation, the third party stated that he accidentally hit Respondent's vehicle on May 9, 2017, at approximately 11:00 p.m.; and

IT FURTHER APPEARING, that in support of his statement, the third party provided Esurance with a screen shot of a text message Respondent sent to him dated May 10, 2017; and

IT FURTHER APPEARING, that on September 9, 2017, Esurance cancelled Respondent's policy due to nonpayment of premium; and

IT FURTHER APPEARING, that on November 1, 2017, Esurance denied Respondent's claim because the accident occurred prior to the inception of the policy; and

IT FURTHER APPEARING that, on December 8, 2017, Esurance denied Respondent's Personal Injury Protection claim because the accident occurred prior to the inception of the policy; and

COUNT ONE
(Producer Act)

IT FURTHER APPEARING, that while licensed as an insurance producer, Respondent knowingly made oral statements in support of a claim for payment pursuant to an insurance policy, knowing that the statements contained false information concerning material facts, and concealed or knowingly failed to disclose the occurrence of any event which affected his initial or continued right or entitlement to (a) any insurance benefit or payment or (b) the amount of any benefit or payment to which he was entitled; and

IT FURTHER APPEARING, that specifically, when Respondent applied for a new insurance policy he concealed the fact that his car had just been damaged in an accident, and then made an insurance claim on that new policy and misrepresented that the accident had occurred after the policy was incepted, which in fact the accident occurred before the policy was incepted, in violation of N.J.S.A. 17:22A-40(a)(2), (8), and (16); and

COUNT TWO
(Fraud Act)

IT FURTHER APPEARING that Respondent knowingly made oral statements in support of a claim for payment pursuant to an insurance policy, knowing that the statements contained false information concerning material facts, and concealed or knowingly failed to disclose the occurrence

of any event which affected his initial or continued right or entitlement to (a) any insurance benefit or payment or (b) the amount of any benefit or payment to which he was entitled; and

IT FURTHER APPEARING, that specifically, when Respondent applied for a new insurance policy he concealed the fact that his car had just been damaged in an accident, and then made an insurance claim on that new policy and misrepresented that the accident had occurred after the policy was incepted, which in fact the accident occurred before the policy was incepted, in violation of N.J.S.A. 17:33A-4(a)(1) and N.J.S.A. 17:33A-4(a)(3); and

NOW, THEREFORE, IT IS on this 28 day of May, 2021

ORDERED, that Respondent appear and show cause why his New Jersey insurance producer license should not be suspended or revoked pursuant to N.J.S.A. 17:22A-40(a); and

IT IS FURTHER ORDERED, that Respondent appear and show cause why the Commissioner should not assess a civil penalty of up to \$5,000.00 for the first violation and \$10,000.00 for each subsequent violation of the Producer Act and order Respondent to pay restitution of moneys owed to any person, pursuant to the provisions of N.J.S.A. 17:22A-45(c); and

IT IS FURTHER ORDERED, that Respondent appear and show cause why he should not be required to reimburse the Department for the cost of the investigation and prosecution, including attorneys' fees, as authorized pursuant to N.J.S.A. 17:22A-45(c), N.J.S.A. 17:33A-5(c), and N.J.A.C. 11:16-7.9(c); and

IT IS FURTHER ORDERED, that Respondent appear and show cause why the Commissioner should not assess a civil penalty of up to \$5,000.00 for the first offense, up to \$10,000.00 for the second offense, and up to \$15,000 for each subsequent offense of the Fraud Act pursuant to the provisions of N.J.S.A. 17:33A-5(c) and N.J.A.C. 11:16-7.9(a); and

IT IS FURTHER ORDERED, that Respondent appear and show cause why the

Commissioner should not impose a \$1,000.00 surcharge against him in accordance with N.J.S.A. 17:33A-5.1; and

IT IS PROVIDED, that Respondent has the right to request an administrative hearing, to be represented by counsel or other qualified representative, at his own expense, to take testimony, to call or cross-examine witnesses, to have subpoenas issued, and to present evidence or argument if a hearing is requested; and

IT IS FURTHER PROVIDED, that unless a request for a hearing is received within twenty (20) days of the service of this Order to Show Cause, the right to a hearing in this matter shall be deemed to have been waived by Respondent, and the Commissioner shall dispose of this matter in accordance with law. A hearing may be requested by mailing the request to Virgil Downtin, Chief of Investigations, Department of Banking and Insurance, P.O. Box 329, Trenton, New Jersey 08625, or by faxing the hearing request to the Department at (609) 292-5337. A copy of the request for a hearing shall also be sent to Deputy Attorney General Jessica Lugo at: Division of Law, P.O. Box 117, Trenton, NJ 08625. The request shall contain the following:

- (a) Respondent's full name, address and daytime telephone number;
- (b) A statement referring to each charge alleged in this Order to Show Cause and identifying any defense intended to be asserted in response to each charge. Where the defense relies on facts not contained in the Order to Show Cause, those specific facts must be stated;
- (c) A specific admission or denial of each fact alleged in this Order to Show Cause. Where Respondent has no specific knowledge regarding a fact alleged in the Order to Show Cause, a statement to that effect must be contained in the hearing request. Allegations of this Order to Show Cause not answered in the manner set forth above shall be deemed to have been admitted; and

- (d) A statement requesting the hearing.

A handwritten signature in blue ink, appearing to read "Marlene Caride".

Marlene Caride, Commissioner