

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 producer)
license of Dominick J. Perrone, Reference No.)
1189022.)

FINAL ORDER

TO: Dominick J. Perrone
143 Edgewood Drive
Toms River, New Jersey 08755

THIS MATTER, having been opened by the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon issuance of Order to Show Cause E18-121 (the “OTSC”) alleging that Dominick J. Perrone (“Perrone” or “Respondent”), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Perrone was formerly licensed as a resident insurance producer in the State of New Jersey, pursuant to N.J.S.A. 17:22A-32(a), until October 31, 2017, when his license expired; and

WHEREAS, Perrone 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”), the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -30 (“Fraud Act”) and the regulations promulgated thereunder, N.J.A.C. 11:16-1.1 to -7.10, the Producer Licensing regulations, N.J.A.C. 11:17-1.1 to -2.17, and the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 to 11:17D-2.8; 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-29, a person shall not sell, solicit or negotiate insurance in this State unless the person is licensed for that line of authority in accordance with the Producer Act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-33(f), licensees shall inform the Commissioner by any means acceptable to the Commissioner of a change of address within 30 days of the change; 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)(5), an insurance producer shall not intentionally misrepresent the terms of an actual or proposed insurance contract, policy or application for insurance; 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, untrustworthiness or financial irresponsibility in the conduct of insurance business in this State or elsewhere; 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.A.C. 11:17A-1.3(a), except as provided in N.J.A.C. 11:17B-2.1(b) or (e), no person shall act as an insurance producer or maintain or operate any office in this State for the transaction of the business of an insurance producer, or receive any commission, brokerage fee, compensation or other consideration for services rendered as an insurance producer, without first obtaining a license from the Commissioner granting authority for the kind of insurance transacted; and

WHEREAS, pursuant to N.J.A.C. 11:17A-1.4(a), no person shall solicit, negotiate or sell an insurance contract in New Jersey unless he or she is a licensed insurance producer; and

WHEREAS, pursuant to N.J.A.C. 11:17-2.8(f)1, an insurance producer 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; and individual licensees shall also provide the Department with a complete and current residence address, phone number and, if applicable, email address; and

WHEREAS, pursuant to N.J.A.C. 11:17-2.8(f)2, an insurance producer 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 30 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; 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 or may levy a civil penalty in accordance with N.J.S.A. 17:22A-45c, or any combination of actions; 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)(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-4(a)(4)(b), no person shall prepare or make 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; 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

WHEREAS, on December 5, 2018, the Commissioner issued the OTSC, alleging that Perrone violated various New Jersey insurance laws by as set forth in the following:

ALLEGATIONS COMMON TO COUNTS ONE TO THREE

IT APPEARING, that Respondent was employed as an insurance producer at American Family Life Assurance Company (“AFLAC”) from March 26, 2015 through May 4, 2015; and

IT FURTHER APPEARING, that during Respondent’s employment at AFLAC he submitted six individual insurance policy applications (“Applications”) for his wife, Jessica Perrone (“Jessica”), which indicated that Jessica was an employee of Jersey Shore Auto Sales (“JSAS”); and

IT FURTHER APPEARING, that JSAS never began operations and that Jessica was never employed by JSAS; and

IT FURTHER APPEARING, that Respondent submitted the Applications to AFLAC and is required to witness the signature of the prospective insured; and

IT FURTHER APPEARING, that Jessica purportedly signed and dated the Applications on March 26, 2015, April 7, 2015 and May 4, 2015 during the time that Respondent was unlicensed; and

IT FURTHER APPEARING, that Respondent’s insurance producer license expired on December 12, 2013 and was not reactivated until May 13, 2015; and

IT FURTHER APPEARING, that AFLAC terminated Respondent’s employment on the basis that the Applications contained forged signatures and intentional material false statements; and

COUNT ONE

IT FURTHER APPEARING, that in each of the Applications, Respondent knowingly and intentionally submitted material false statements to AFLAC in violation of N.J.S.A. 17:22A-40(a)(2), (5), (8), and (16), and N.J.S.A. 17:33A-4(a)(4)(b); and

COUNT TWO

IT FURTHER APPEARING, that Respondent submitted the Applications while he was not licensed as an insurance producer, in violation of N.J.S.A. 17:22A-29, N.J.S.A. 17:22A-40(a)(2) and (8), N.J.A.C. 11:17A-1.3(a), and N.J.A.C. 11:17A-1.4(a); and

COUNT THREE

IT FURTHER APPEARING, that on September 30, 2016, the Department of Banking and Insurance (“Department”) attempted to contact Respondent at the address on file with the Department; and

IT FURTHER APPEARING, that a public records search conducted on October 20, 2016 revealed that Respondent had changed his address; and

IT FURTHER APPEARING, that the Department sent certified letters to all known addresses of Respondent on October 21, 2016 and November 21, 2016 requesting a statement from Respondent regarding its investigation of the Applications, but the certified letters were returned as undeliverable; and

IT FURTHER APPEARING, that Respondent, as a resident licensed producer, failed to provide the Department with a complete and current business and residence address, phone number and email address; and

IT FURTHER APPEARING, that the attempt to contact Respondent at the address on file with the Department was unsuccessful; and

IT FURTHER APPEARING, that Respondent, as a resident licensed producer, failed to inform the Commissioner of a change in his residential address within 30 days, in violation of N.J.S.A. 17:22A-40a(2) and (8), N.J.S.A. 17:22A-33(f), and N.J.A.C. 11:17-2.8(f)2; and

IT FURTHER APPEARING that mailing of the OTSC by regular and certified mail to the residential addresses of Perrone, according to files maintained by the Department, constitutes lawful service, pursuant to N.J.A.C. 11:17D-2.1(a)3; and

IT FURTHER APPEARING that Perrone was given notice of the aforesaid charges and an opportunity to contest the charges at a hearing pursuant to the OTSC; and

IT FURTHER APPEARING that as set forth in the Certification of Jessica Lugo, attached as Exhibit A, under cover letter dated December 11, 2018, the OTSC was sent by certified and

regular mail to the last known two (2) residential addresses of Perrone at 1306 Lee Way, Forked River, New Jersey 08731 and 26 Main Street, Suite 100, Toms River, New Jersey 08753; and

IT FURTHER APPEARING that upon receiving an Answer and hearing request from Perrone, on February 27, 2019, the matter was transmitted to the Office of Administrative Law (“OAL”) for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13; and

IT FURTHER APPEARING that Perrone appeared pro se for this matter; and

IT FURTHER APPEARING that on August 2, 2019, discovery demands were propounded on Perrone; and

IT FURTHER APPEARING that despite numerous extensions Perrone never responded to the discovery demands; and

IT FURTHER APPEARING that Perrone failed to appear for several telephonic conferences; and

IT FURTHER APPEARING that due to the non-appearances, the OAL scheduled a peremptory status conference on May 6, 2021; and

IT FURTHER appearing that a further peremptory status conference was scheduled for May 26, 2021; and

IT FURTHER APPEARING that the notice for the May 26, 2021 conference stated that no adjournments would be granted and that if Perrone did not participate, the file would be returned to the transmitting agency; and

IT FURTHER APPEARING that Perrone did not appear for the May 26, 2021 telephone conference; and

IT FURTHER APPEARING that Perrone was given the opportunity to file a written explanation no later than 12:00 pm on Friday, May 28, 2021 for his failure to appear for the telephonic conference and was advised that his failure to file an explanation would result in the file being returned to the transmitting agency pursuant to N.J.A.C. 1:1-14.4(a), and

IT FURTHER APPEARING that Perrone did not file a written explanation for his failure to appear for the telephonic conference; and

IT FURTHER APPEARING that on June 7, 2021, the OAL issued a Notice of Return for Failure to Appear; and

IT FURTHER APPEARING that no explanation was received by the Department of Banking & Insurance within thirteen days of the notice; and

IT FURTHER APPEARING that in Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987), the Supreme Court established factors in order to evaluate the imposition of fines in administrative proceedings. Here, the factors are applied as follows. Under factor one, Respondent showed bad faith by attempting to defraud AFLAC and gain commissions for the fraudulent applications he submitted. Under factor two, ability to pay is considered. The Respondent has not provided evidence of inability to pay into the record in this case. Under factor three, Respondent did not profit because AFLAC did not pay commissions that he attempted to gain by submitting the fraudulent applications. Under factor four, there was injury to the public because Respondent attempted to obtain commissions from an insurance company that would otherwise be used for legitimate purposes. Also, Respondent's attempt to defraud AFLAC out of commission money caused AFLAC and the State to exert time and money to investigate his actions, and harmed the reputation of insurance producers and the business of insurance in the eyes of the public. Under the fifth factor, there is evidence that Respondent's misconduct encompassed

a two month period. Under the sixth factor, Respondent was not criminally charged for his conduct. Under factor seven, there appears to be no past violations for Respondent. Following the guidance provided by the court in Kimmelman, three factors support a higher fine, two factors appear neutral, and two factors support a lower fine.

NOW, THEREFORE, IT IS on this 22nd day of June, 2022,

ORDERED, that Respondent's request for a hearing be deemed withdrawn and dismissed.

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-40, and N.J.A.C. 11:17D-2.1(b)(2), the insurance producer license of Perrone is **REVOKED** effective upon the execution of this Final Order; and

IT IS FURTHER ORDERED, that based upon the Kimmelman analysis above, Perrone shall be responsible for the payment of \$150,000 in civil penalties for violations of the Producer Act, Fraud Act, and other insurance laws cited above as follows:

Perrone shall be responsible for the payment of civil penalties to the Division of Insurance Enforcement totaling \$75,000 for the Producer Act violations as described in Counts 1 to 3 of the Order to Show Cause; and

Perrone shall be responsible for the payment of civil penalties to the Bureau of Fraud Deterrence totaling \$75,000 for the Fraud Act violations as described in Count 1 of the Order to Show Cause; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c) and N.J.A.C. 11:1-32.4(b)20, Perrone shall reimburse the Department of Banking and Insurance, Division of Insurance Enforcement and Bureau of Fraud Deterrence, for the costs associated with the investigation and prosecution of this matter, as evidenced by the Certifications of Costs by

Investigator Matthew Gervasio (attached as Exhibit B) totaling \$1,000.00. The Commissioner has reviewed the investigative costs application and finds the amount of time to be reasonable; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:33A-5(c), Perrone shall reimburse the Department of Banking and Insurance, Bureau of Fraud Deterrence, for the attorneys' fees associated with the investigation and prosecution of this matter, as evidenced by the Certification of Jessica Lugo, totaling \$12,150.00. The Commissioner has reviewed the attorneys' fees application and finds the amount of time to be reasonable; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:33A-5.1, Perrone shall pay the Department of Banking and Insurance, Bureau of Fraud Deterrence, a statutory fraud surcharge in the amount of \$1,000.00; and

IT IS FURTHER ORDERED, that Perrone shall pay the above fines and costs totaling \$164,150 by remitting full payment to the Commissioner of Banking and Insurance, State of New Jersey, 20 West State Street, P.O. Box 329, Trenton, New Jersey 08625, Attention: Virgil Dowtin, Chief of Investigations by certified check, cashier's check or money order made payable to the "State of New Jersey, General Treasury," within ten (10) days from the date of service of this Order; and

IT IS FURTHER ORDERED, that in the event full payment of the fines and costs is not made, the Commissioner may exercise any and all remedies available by law, including but not limited to recovery of any unpaid penalties, in accordance with the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 to -12; and

IT IS FURTHER ORDERED, that the fines in this Final Order are imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of the

public health, safety and welfare, and are not intended to constitute debts which may be limited or discharged in a bankruptcy proceeding; and

IT IS FURTHER ORDERED, that the provisions of this Final Order represent a final agency decision and constitute a final resolution of the allegations contained in the OTSC.



Marlene Caride
Commissioner