

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,)	FINAL ORDER
to fine, suspend and/or revoke the insurance)	
producer license of Fernando Acosta,)	
Reference No. 1466099.)	

TO: Fernando Acosta
86 Warren Street
Apt 3B
Nutley, New Jersey 07110-2343

This matter, having been opened by the Commissioner of Banking and Insurance, State of New Jersey (“Commissioner”), upon information that Fernando Acosta (“Acosta” or “Respondent”) may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Respondent was licensed as a resident insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-32(a), until said license expired on or about December 31, 2020; 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 this act or 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)(4), an insurance producer shall not improperly withhold, misappropriate or convert any monies or properties received in the course of doing insurance business; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(7), an insurance producer shall not commit any insurance unfair trade practice or fraud; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(8), an insurance producer shall not use 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)(10), an insurance producer shall not forge another's name to an application for insurance or to any document related to an insurance transaction; 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 11:17C-2.1(a), all premium funds shall be held by an insurance producer in a fiduciary capacity and shall not be misappropriated, improperly converted to the insurance producer's own use, or illegally withheld by the licensee; and .

WHEREAS, pursuant to N.J.A.C 11:17C-2.2(a), all premium funds shall be remitted to the insurer or other insurance producer, as applicable, within five business days after receipt of the funds except as otherwise required or provided by this subchapter; and

WHEREAS, pursuant to N.J.A.C 11:17A-4.8, an insurance producer shall reply, in writing, to any inquiry of the Department of Banking and Insurance relative to the business of insurance within the time requested in said inquiry, or no later than 15 calendar days from the date the inquiry was made or mailed in cases where no response time is given; 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 or may levy a civil penalty 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 of up to \$5,000.00 for the first offense and up to \$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, on July 20, 2021, Order to Show Cause No. E21-29 ("Order to Show Cause") was issued against Respondent, charging violations of the New Jersey Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48 ("Producer Act"), as described below:

ALLEGATIONS COMMON TO ALL COUNTS

IT APPEARING, that at all relevant times, Respondent was a licensed insurance producer in the State of New Jersey, and employed as a District Sales Manager with Mutual of Omaha Life Insurance Company ("Mutual of Omaha"); and

IT FURTHER APPEARING, that on or about September 21, 2016, J.W. remitted to Respondent a personal check made payable to "N.A." in the amount of \$8,643.32 for the purpose of purchasing from Mutual of Omaha an annuity policy issued by the North American Company ("North American"); and

IT FURTHER APPEARING, that on or about May 3, 2017, J.W. remitted to Respondent a second personal check made payable to "N.A." in the amount of \$6,430.00 for the purpose of purchasing from Mutual of Omaha a second annuity policy issued by the North American; and

IT FURTHER APPEARING, that in or about December 2017, J.W. contacted Mutual of Omaha to report that Respondent had failed to deliver the annuity policies she had purchased from North American; and

IT FURTHER APPEARING, that Mutual of Omaha investigated J.W.'s claim whereupon Respondent admitted that he did not purchase annuity policies with J.W.'s checks, but instead altered said checks, deposited them into his family's bank accounts and used those funds for his own personal benefit; and

IT FURTHER APPEARING, that on December 7, 2017, Respondent's employment with Mutual of Omaha was terminated, and that on January 25, 2018, Mutual of Omaha directly reimbursed J.W., in full, for the monies misappropriated by the Respondent; and

COUNT ONE

IT FURTHER APPEARING, that in connection with the transaction on or about September 21, 2016, Respondent made false statements and misrepresentations to J.W. and, without the consent, knowledge or approval of J.W., did not purchase an annuity policy for J.W., but instead altered J.W.'s check by placing Respondent's wife's name as the "payee," forged his wife's signature and deposited said check into his wife's bank account, and thereafter utilized the funds for Respondent's own personal use and benefit; and

IT FURTHER APPEARING, that Respondent thereby knowingly engaged in fraudulent and deceitful conduct in the course of doing insurance business, and committed acts of fraud, conversion and forgery in the connection with his misappropriation of the monies received from J.W., in violation of N.J.S.A. 17:22A-40(a)(2), (4), (7), (8), (10) and (16); and N.J.A.C 11:17C-2.1(a); and

COUNT TWO

IT FURTHER APPEARING, that in connection with the transaction on or about May 3, 2017, Respondent made false statements and misrepresentations to J.W. and, without the consent, knowledge or approval of J.W., did not purchase an annuity policy for J.W., but instead altered J.W.'s check by placing Respondent's name as the "payee," signed and deposited said check into his bank account, and thereafter utilized the funds for Respondent's own personal use and benefit; and

IT FURTHER APPEARING, that Respondent thereby knowingly engaged in fraudulent and deceitful conduct in the course of doing insurance business, and committed acts of fraud, conversion and forgery in the connection with his misappropriation of the monies received from J.W., in violation of N.J.S.A. 17:22A-40(a)(2), (4), (7), (8), (10) and (16); and N.J.A.C 11:17C-2.1(a); and

COUNT THREE

IT FURTHER APPEARING, that Respondent failed to reply, in writing and within the time requested, to correspondence from the Department of Banking and Insurance regarding its investigation into his business transactions with J.W., in violation of N.J.A.C. 11:17A-4.8; and

IT FURTHER APPEARING, that as set forth in the Certification of Dakar Ross, attached hereto as Exhibit A, Respondent was given notice of the aforesaid charges and an opportunity to contest the charges at a hearing pursuant to Order to Show Cause E21-29, which was duly served on Respondent by certified mail, RRR, and regular mail to the address listed on this Final Order in accordance with N.J.A.C. 11:17D-2.1(a)(3); and

IT FURTHER APPEARING, that Respondent failed to provide written responses to the charges contained in Order to Show Cause E19-73 within 20 days as provided by N.J.A.C. 11:17D-2.1(d)(1), and therefore Respondent has waived his rights to a hearing to contest these charges and the charges are deemed admitted, pursuant to N.J.A.C. 11:17D-2.1(b)(1); and

IT FURTHER APPEARING, that in Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987), the Supreme Court established seven factors to be considered in determining the imposition of civil fines in administrative proceedings (“Kimmelman Factors”); and

IT FURTHER APPEARING, that the seven Kimmelman Factors are as follows: (1) the good or bad faith of the defendant; (2) defendant’s ability to pay a civil fine; (3) the amount of profits obtained from the illegal activity; (4) the injury to the public; (5) the duration of the

misconduct; (6) the existence of criminal or treble damages actions; and (7) the past violations of defendant; and

IT FURTHER APPEARING, that the Kimmelman Factors apply to this matter as follows: (1) Respondent showed bad faith by knowingly misappropriating money from his client; (2) Respondent has not provided any evidence of his inability to pay a civil fine; (3) Respondent profited in the amount of \$15,073.32 as a result of the illegal activity; (4) there was injury to the public because Respondent embezzled money entrusted to him by his client and also his actions caused harm to the reputation of the insurance industry and to licensed producers everywhere; (5) the duration of Respondent's scheme was nine (9) months; (6) no criminal or treble damages actions have been filed against Respondent regarding his illegal activity; and (7) Respondent has no past violations; and

NOW, THEREFORE, IT IS on this 9 day of August, 2022,

ORDERED, that the charges contained in Counts 1, 2 and 3 of Order to Show Cause E21-29 are deemed admitted by Respondent, pursuant to N.J.A.C. 11:17D-2.1(b)(1); and

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 resident insurance producer license of Fernando Acosta is hereby **REVOKED** effective upon the execution of this Final Order by the Commissioner; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c), Respondent shall pay a civil penalty in the total amount of \$25,000 to the Commissioner, determined as follows: \$5,000 for the violation stated in Count 1 of the OTSC, \$10,000 for the violation stated in Count 2 of the OTSC and \$10,000 for the violation stated in Count 3 of the OTSC; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c), Respondent shall be responsible for the reimbursement to the Department of the costs of investigation totaling

\$702.50. A true and exact copy of the Certification of Drew A. Gowen, Department of Banking and Insurance Investigator, is attached hereto as Exhibit B; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c), Respondent shall be responsible to pay restitution to Mutual of Omaha Life Insurance Company (“Mutual of Omaha”) in the amount of \$17,943.22; and

IT IS FURTHER ORDERED, that Respondent shall pay the above penalties and costs to the Commissioner of Banking and Insurance, State of New Jersey, P.O. Box 329, Trenton, New Jersey 08625, Attention: Virgil Downtin, Chief of Investigations, by certified check, cashier’s check or money order made payable to the “State of New Jersey, General Treasury,” within ten days from the date of service of this Order; and

IT IS FURTHER ORDERED, that in the event full payment of the penalty 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, with post-judgment interest, in accordance with the Penalty Enforcement Law, N.J.S.A. 2A:58-10 to -12; and

IT IS FURTHER ORDERED, that the civil penalty in this Final Order is 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 is 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 Order to Show Cause No. E21-29.



Marlene Caride
Commissioner