

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

OAL DOCKET NO.: BKI-04036-22  
AGENCY DOCKET NO.: #E22-31

MARLENE CARIDE, )  
COMMISSIONER, NEW JERSEY )  
DEPARTMENT OF BANKING AND )  
INSURANCE, )  
)  
Petitioner, )  
)  
v. )  
)  
OCTAVIO MONTOYA, )  
)  
)  
Respondent. )

FINAL DECISION AND ORDER

This matter comes before the Commissioner of Banking and Insurance (“Commissioner”) pursuant to the authority of N.J.S.A. 52:14B-1 to -31, N.J.S.A. 17:1-15, the Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48 (“Producer Act”), and all powers expressed or implied therein, for the purposes of reviewing the March 23, 2023 Initial Decision (“Initial Decision”) of Administrative Law Judge Kelly J. Kirk (“ALJ”).

In the Initial Decision, the ALJ found that Octavio Montoya (“Respondent”), while licensed as an insurance producer, knowingly prepared and made a written statement, intended to be presented to an insurance company or producer for the purpose of obtaining an insurance policy, knowing that the statement contained false or misleading information concerning any fact or thing material to an insurance application, as set forth in Count One of Order to Show Cause No. E22-31 (“OTSC”). Specifically, when the Respondent applied for a new insurance policy, he concealed the fact that his son resides with him and operates the listed vehicles, thereby committing insurance

fraud in violation of the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -30 (“Fraud Act”) and in violation of N.J.S.A. 17:22A-40(a)(2), (5), (7), (8) and (16). The ALJ recommended the following: revocation of the Respondent’s insurance producer license, penalties in the amount of \$2,500 for violations of the Producer Act and costs of investigation and prosecution in the amount of \$575. Neither party filed exceptions to the Initial Decision.<sup>1</sup>

Having carefully reviewed the Initial Decision and the record herein, I hereby ADOPT the Initial Decision as my Final Decision except as clarified herein. Moreover, I ORDER the revocation of the Respondent’s insurance producer license, and the imposition of penalties in the amount of \$2,500 for violations of the Producer Act and the costs of investigation and prosecution in the amount of \$575.

The ALJ notes that unlike the Fraud Act, the Producer Act does not contain language specifically stating that each violation of a provision in the course of a single claim or application for insurance constitutes a separate violation for which a separate penalty may be imposed. Initial Decision at 18. This is a distinction without a difference. The Respondent’s violations of the Fraud Act were disposed of in a September 28, 2017 Consent Order. The present Initial Decision and Final Order concern the Respondent’s violation of the Producer Act, which permits the imposition of a penalty when an individual violates any provision of the Act, not to exceed \$5,000 for the first offense and not to exceed \$10,000 for each subsequent offense. The Respondent’s

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<sup>1</sup> On April 5, 2023, an electronic copy of a character reference letter written by Alex Vargas, the Respondent’s direct supervisor, was submitted on behalf of the Respondent. There is no indication that this letter was intended to serve as the Respondent’s exceptions to the Initial Decision. The Respondent did not submit any further exceptions. In addition, by letter dated April 5, 2023, Deputy Attorney General William E. Vaughan stated the Department had no exceptions to the Initial Decision in this matter.

conduct concerns a singular misrepresentation made in support of one insurance policy, which violates five provisions of the Producer Act and is subject to a maximum penalty of \$5,000.

SO ORDERED this 2<sup>nd</sup> day of May, 2023.



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Marlene Caride  
Commissioner

AR Montoya FO/Final Orders - Insurance