

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DOCKET NOS.: BKI-10817-12-AND
BKI 2360-13 (Consolidated)
AGENCY DOCKET NOS.: OTSC #E12-55
AND OTSC #E13-01

KENNETH E. KOBYSLOWSKI,)
COMMISSIONER OF BANKING)
AND INSURANCE,)
)
Petitioner,)
 v.)
)
WEIRAN DOBREK AND THOMAS DOBREK,)
)
Respondents,)

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 et seq., N.J.S.A. 17:1-15, N.J.S.A. 17:22A-26 et seq., the New Jersey Producer Licensing Act of 2001, (the "Producer Act") and N.J.S.A. 17:33A-1 et seq., the New Jersey Insurance Fraud Prevention Act (the "Fraud Act"), and all powers expressed or implied therein, for the purpose of reviewing the Initial Decision of Administrative Law Judge Patricia M. Kerins ("ALJ") decided on June 2, 2014 ("Initial Decision"). In that Decision, the ALJ granted summary decision to the Department of Banking and Insurance ("the Department") against Weiran Dobrek ("Ms. Dobrek") on two of the three counts alleged in the Department's Order to Show Cause No. E12-55, ("OTSC E12-55"), and recommended

suspension of her New Jersey insurance producer license for five years and the imposition of civil penalties and the costs of investigation for the offenses.

The ALJ also granted summary decision to the Department against Thomas Dobrek (“Mr. Dobrek”) with respect to one of two counts of Order to Show Cause No. E13-01, (“OTSC E13-01”), and recommended imposition of a monetary penalty, attorney’s fees, an insurance surcharge, and the suspension of his driver’s license for the proven offenses.

PROCEDURAL HISTORY

On May 4, 2012, the Department issued OTSC E12-55 against Weiran Dobrek seeking to revoke her insurance producer license and to impose civil penalties and costs of investigation for alleged violations of the Producer Act. In OTSC E12-55, the Department alleges that Ms. Dobrek engaged in the following activities in violation of the insurance laws of this State:

Count 1 - Ms. Dobrek fraudulently misrepresented on her application for automobile insurance and in a recorded conversation with Esurance that she was “single,” failed to disclose the existence of her husband, and falsely stated that Thomas Dobrek did not reside at her address, in violation of N.J.S.A. 17:22A-40a(2), (5), (8) and (16);

Count 2 - Ms. Dobrek fraudulently misrepresented during the course of a claim under her automobile insurance policy with Esurance that she was driving the insured vehicle at the time of an accident, when in fact her husband was driving the vehicle, in violation of N.J.S.A. 17:22A-40a(2), (8) and (16); and,

Count 3 - Ms. Dobrek entered into a Consent Order with the Office of the Insurance Fraud Prosecutor (“the OIFP”) in resolution of charges under the Fraud Act for the acts charged in Counts 1 and 2 above that imposed a \$5,000 civil penalty, but she failed to report her entry into the Consent Order to the Department as required under the insurance laws, in violation of N.J.S.A. 17:22A-47a.

On July 13, 2012, Ms. Dobrek filed an Answer denying the violations alleged in OTSC E12-55, and requesting a hearing. The Department transmitted the contested case to the Office

of Administrative Law (“the OAL”) on August 10, 2012, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

On January 2, 2013, the Department issued OTSC E13-01 against Thomas Dobrek seeking to impose civil penalties and attorney’s fees for violations of the Fraud Act. In OTSC E13-01, the Department alleges that Mr. Dobrek engaged in the following activities in violation of the Fraud Act:

Count 1 – Mr. Dobrek falsely stated his name when filing an Esurance automobile claim, in violation of N.J.S.A. 17:33A-4a(1), (2), (3) and (5); and

Count 2 – Mr. Dobrek assisted and conspired with Ms. Dobrek to provide false information to Esurance during the course of the claims process, in violation of N.J.S.A. 17:33A-4b.

On February 14, 2013, Mr. Dobrek filed an Answer denying the violations alleged in OTSC E13-01. On February 20, 2013, the Department transmitted the contested case to the Office of Administrative Law (“the OAL”) pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

On March 21, 2013, the OAL consolidated the two contested cases involving OTSC E12-55 and OTSC E13-01 for hearing and disposition. On August 19, 2013, the Department moved for a Summary Decision against the Dobreks. The Dobreks filed opposition papers thereto. On November 22, 2013, at the request of the ALJ, the Department submitted a summary of the recorded conversations and compact discs with the recordings between Esurance Insurance Company and Mr. Dobrek as well as Esurance Insurance Company and Ms. Dobrek.

On June 2, 2014, the ALJ granted Summary Decision as to certain allegations against Weiran Dobrek and recommended suspension of her insurance producer license for five years and imposition of a \$7,500 monetary penalty and \$675 in investigation costs. The ALJ further

granted Summary Decision as to one of two counts in OTSC No. E13-01 against Thomas Dobrek and recommended imposition of a \$5,000 civil monetary penalty, \$3,623.50 in costs, a \$1,000 insurance surcharge, and suspension of Mr. Dobrek's driver's license for one-year.

ALJ's FINDINGS OF FACT

The ALJ found the following relevant facts in her grant of summary decision. Weiran Dobrek has been a licensed limited lines insurance producer with bail bonds authority since 2003 and she owns and manages Atlantic Bail bonds in Mount Holly, New Jersey. Initial Decision, 2014 N.J. Agen LEXIS 217, at *2. On January 17, 2007, Ms. Dobrek completed an online application for automobile insurance with Esurance, whereupon she listed her marital status as "single." Ibid. Ms. Dobrek, however, was married to Thomas Dobrek, although both asserted that they were separated when Ms. Dobrek filled out the application. Id. at *2-3. On the application, Ms. Dobrek listed the address as 5 Paddock Way, Bordentown, New Jersey, and she alleged that Mr. Dobrek was residing in Woodbridge, New Jersey at the time. Id. at *3. When she completed the application, Mr. Dobrek's driving privileges were suspended. Ibid. Ms. Dobrek was issued an Esurance auto policy for the subject vehicle. Ibid.

On August 22, 2007, the insured automobile was involved in an accident while operated by Thomas Dobrek as the sole occupant of the vehicle. Ibid. The police report confirmed Mr. Dobrek as the driver and listed his address as 5 Paddock Way, Bordentown, New Jersey. Ibid. Mr. Dobrek called Esurance and filed a claim, stating that his name was Weiran Dobrek. Ibid.

On August 27, 2007, an Esurance claim representative discussed the claim with Weiran Dobrek over the telephone. Ibid. English is Ms. Dobrek's second language, and she claims that she had difficulty understanding the representative. Id. at *3-4. Ms. Dobrek represented that she was the driver of the insured auto involved in the August 22, 2007 accident. Id. at *4. Ms.

Dobrek represented that she stopped at a stop sign, looked both ways and then proceeded into the intersection and was struck by another vehicle. Ibid. The Esurance claims representative alleged that she heard Ms. Dobrek being “coached” by an adult male, assumed to be Mr. Dobrek during the August 27, 2007 phone call. Ibid.

Later that day, an Esurance Special Investigations Unit Investigator (“SIU investigator”) contacted Ms. Dobrek and during their discussion Ms. Dobrek admitted that her husband was driving the insured auto and that they were married. Ibid. Ms. Dobrek also admitted that Mr. Dobrek receives his mail at their Bordentown home. Ibid. Esurance obtained a Certified Driver Abstract which confirmed Mr. Dobrek’s address as the Bordentown address. Ibid.

During a second interview with Ms. Dobrek conducted by the SIU investigator, Ms. Dobrek revealed that she had falsely reported that she was the driver during the accident because her husband was not listed as a driver on the policy and that she was aware that she was supposed to be the only driver. Id. at *4-5. As a result of this disclosure by Ms. Dobrek, Esurance rescinded the policy as of the effective date, January 17, 2007, for her failure to disclose her husband as a driver in the household. Id. at *5.

Esurance referred the matter to the Office of the Insurance Fraud Prosecutor (“OIFP”). Ibid. The OIFP investigation revealed that Mr. Dobrek is registered to vote at the policy address, receives mail at that address, and he answered the telephone at the residence on January 14, 2009. Ibid. On December 1, 2009, Weiran Dobrek signed a Consent Order with the OIFP on the allegations that she made material misrepresentations in the application, for failing to disclose her husband as a licensed driver at the policy address and that she made material misrepresentations in support of an automobile insurance claim. Ibid.

ALJ'S LEGAL ANALYSIS AND CONCLUSIONS

The ALJ noted that N.J.A.C. 1:1-12.5 governs motions for summary decision, which mirrors the language of New Jersey Court Rule 4:46-2, the rule regarding motions for summary judgment. Pursuant to these rules, a case may be decided on the papers if “there is no genuine issue as to any material fact challenged and the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12-5(b). “An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submissions of the issues to the trier of fact.” R. 4:46-2.

The ALJ further noted that when a motion for summary decision is made and supported, the burden shifts to the adverse party to set forth by affidavit, specific facts showing there is a genuine issue resolvable only by an evidentiary proceeding. N.J.A.C. 1:1-12.5(b). Therefore, the opposing party must show that “there is a genuine issue which can only be determined in an evidentiary proceeding” to survive summary decision. Ibid. Failure to do so entitles the moving party to summary judgment. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 529 (1995). The ALJ further noted that in disciplinary actions where summary decision is sought on both the issue of liability and on the issue of penalties, where the opposing party has failed to establish an issue of material fact, summary decision may be rendered on both issues. Commissioner v. Nicolo, OAL Dkt. No. BKI 10722-04, Initial Decision, (05/31/06), Final Decision and Order (10/12/06) <<http://njlaw.rutgers.edu/collections/oal/>>.

ALJ's Findings as to the Allegations against Weiran Dobrek

The ALJ stated that the Producer Act authorizes the Commissioner to regulate the business of insurance producers in New Jersey and to revoke or suspend an insurance producer's

license and to impose civil penalties for violations of the Producer Act. N.J.S.A. 17:22A-40a and -45c. The ALJ noted that in administrative enforcement proceedings such as license revocation or suspension matters, the Commissioner bears the burden of proving a violation. Commissioner v. Myerson, BKI 6740-01, Initial Decision, (06/14/02), adopted with modifications, Comm'r (08/02/02) <<http://njlaw.rutgers.edu/collections/oal/>>. Furthermore, the ALJ noted that the Commissioner must establish the essential elements of fact by a fair preponderance of the evidence. In re Polk, 90 N.J. 550, 560 (1982). A fair preponderance of the evidence is evidence that is sufficient to assure reliability and to avoid the appearance of arbitrariness. Commissioner v. Ladas, BKI 0947-02, Initial Decision, (02/05/04), adopted in part, modified in part, Comm'r. (06/22/04) <<http://njlaw.rutgers.edu/collections/oal/>> (citing N.J.S.A. 52:14B-10(a), -10(c); N.J.A.C. 1:1-15.5; Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); and Cumberland Farms Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987)).

Based on those standards, the ALJ determined that the Department should prevail on two of the five alleged statutory violations contained in OTSC E12-55, the OTSC against Ms. Dobrek. Specifically, the ALJ found that the Department met its burden on certain alleged violations related to Count 2 (insurance claim misrepresentation) and Count 3 (failure to notify the Department of the OIFP Consent Order), but failed to meet its burden on the allegations in Count 1 of OTSC E12-55 (application misrepresentation).

Count 1 of OTSC E12-55 alleges the following statutory violations: N.J.S.A. 17:22A-40a(2), (5), (8) and (16). As to those allegations, the ALJ found no violation of N.J.S.A. 17:22A-40a(2) (violated an insurance law or regulation) because the Department did not articulate which provision of the insurance law or regulation Ms. Dobrek violated. The ALJ determined that the Department did not meet its burden of establishing the intent required by

N.J.S.A. 17:22A-40a(5) (intentionally misrepresented the terms of an application for insurance). The ALJ found that whether Ms. Dobrek acted with intent required a credibility determination. The ALJ found, however, that summary decision is appropriate as Ms. Dobrek provided a false answer to an objective question in filling out the Esurance application. Additionally, the ALJ found that the statutory language of N.J.S.A. 17:22A-40a(8) (fraudulent or dishonest practices or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business) was limited to practices in the conduct of insurance business; therefore, the Department did not prevail on this point. The ALJ did not specifically address the alleged violation of N.J.S.A. 17:22A-40a(16) (committed a fraudulent act) in Count 1, but found that Ms. Dobrek provided a false answer to an objective question in filling out the Esurance application.

As to the allegations in Count 2 of OTSC E12-55, the ALJ found that Ms. Dobrek committed a fraudulent act as contemplated by N.J.S.A. 17:22A-40a(16) by filing an insurance claim wherein she misrepresented that she was the driver during the accident. The ALJ noted that as a licensed insurance producer, Ms. Dobrek is held to a higher standard. The ALJ found that such conduct constitutes sufficient grounds for suspension of Ms. Dobrek's insurance producer license.

As to the allegations in Count 3 of OTSC E12-55, the ALJ found that Ms. Dobrek failed to report the OIFP Consent Order to the Department within thirty days of date she signed the Consent Order, in violation of N.J.S.A. 17:22A-47a. The ALJ noted that the statute specifically mentions Consent Orders and there is no genuine issue of material fact.

ALJ's Findings as to the Penalty against Weiran Dobrek

The ALJ determined that monetary penalties, costs and a five year license suspension were appropriate in this matter. The ALJ noted that the standards for determining the

appropriateness of civil monetary penalties should be discussed as set forth in Kimmelman v. Henkles & McCoy, Inc., 108 N.J. 123, 137-39 (1987). In considering the seven Kimmelman factors, the ALJ made the following determinations: Ms. Dobrek did not act in good faith and live up to the high standards required of an insurance producer; Ms. Dobrek failed to provide sufficient information to determine whether she lacks the ability to pay a substantial fine; it appears that Ms. Dobrek lost money through her fraudulent actions because Esurance voided her policy ab initio and her vehicle was involved in an accident; there is risk of injury to the public because fraudulent acts are inimical to the conduct of the insurance business; the duration of the illegal activity was short but the conspiracy is itself the underlying wrong; an additional fine in this matter and the OIFP fine is not unduly punitive; and Ms. Dobrek does not have any prior violations. Based upon this analysis, the ALJ determined that \$7,500 in civil monetary penalties was appropriate in this case. The ALJ also determined that the costs of investigation of \$675 were appropriate.

ALJ's Findings as to the Allegations against Thomas Dobrek

The ALJ determined that the Department should prevail on one of the two Counts contained in OTSC E13-01, the OTSC against Mr. Dobrek. Specifically, the ALJ found that the Department met its burden on Count 1 (insurance claim misrepresentation), but failed to meet its burden on the allegations in Count 2 (conspires to violate the Fraud Act) of OTSC E13-01.

As to Count 1, the ALJ determined that Thomas Dobrek violated N.J.S.A. 17:33A-4a(1), (2), (3) and (5) by stating that his name was "Weiran Dobrek," and falsely representing that Ms. Dobrek was the driver at the time of the accident. As to Count 2, the ALJ determined that the Department could not prevail on an alleged violation of N.J.S.A. 17:33A-4b because that provision addresses false statements made during the application process, not during the claims process.

The ALJ found the following penalties to be appropriate: a \$5,000 monetary fine pursuant to N.J.S.A. 17:33A-5c; \$3,623.50 in attorney's fees (Snow Cert., Ex. B, ¶¶ 25-30); a \$1,000 insurance surcharge pursuant to N.J.S.A. 17:33A-5.1; and suspension of Mr. Dobrek's driver's license for one-year pursuant to N.J.S.A. 39:6A-15.

EXCEPTIONS

On June 23, 2014, the Office of the Attorney General on behalf of the Department, submitted Exceptions to the Initial Decision in a letter to the Commissioner. Weiran and Thomas Dobrek did not submit exceptions.

The Department concurs with the overall conclusion and the majority of the penalty recommendations of the ALJ finding that Weiran and Thomas Dobrek committed fraudulent acts in their claim for insurance benefits. However, the Department wished to clarify several issues as follows.

Weiran Dobrek

The Department avers that the ALJ correctly found that Ms. Dobrek violated the Producer Act by making fraudulent statements on a claim for insurance benefits and for failing to notify the Department of the OIFP action against her (Counts 2 and 3 of OTSC No. E12-55), however, the Department takes exception to three findings of the ALJ. Specifically, the Department disagrees with the following findings:

1.) The Department did not meet its burden of establishing intent as to whether Ms. Dobrek made a false statement regarding her marital status on her auto insurance application and failed to disclose that Mr. Dobrek was a driver of the insured vehicle, as alleged in Count 1 of OTSC No. E12-55;

2.) Fraudulent activity by an insurance producer while conducting personal business is not a violation of the Producer Act, specifically, N.J.S.A. 17:22A-40a(8); and

3.) Producer license suspension for five years is the appropriate penalty.

First, the Department argues that it met its burden of establishing intent as to whether Ms. Dobrek made a false statement regarding her marital status on the insurance application. The ALJ states that both Mr. and Ms. Dobrek certified that they were married, but separated at the time that Ms. Dobrek completed the application, and that Ms. Dobrek's language skills made it difficult for her to understand the application. Because of these facts, the ALJ found that a credibility determination is required. However, the Department notes that in Ledley v. William Penn Life Ins. Co., 138 N.J. 627 (1995), the Supreme Court differentiated between subjective and objective answers in applications for insurance coverage, stating that "the applicant's knowledge of the falsity of his representations is material only as respects subjective questions" not objective questions. Id. at 636. The Department argues that the questions were objective questions and Ms. Dobrek had to know the importance of answering truthfully on an insurance application, and knew the correct answers but provided false answers. Therefore, Ms. Dobrek's state of mind as to how to interpret the question is immaterial in determining its falsity. As a result, Ms. Dobrek deceived Esurance by providing false answers on the application for automobile insurance, in violation of N.J.S.A.17:22A-40a(5), (8) and (16), as well as N.J.S.A. 17:22A-40a(2). Accordingly, summary decision is appropriate on Count 1 of OTSC No. E12-55.

Next, the Department states that the Initial Decision suggests that fraudulent activity by an insurance producer while conducting personal insurance business is not a violation of the Producer Act, specifically N.J.S.A.17:22A-40a(8). The Department asserts that such a position contradicts the previous findings that insurance producers violate the Producer Act, resulting in the imposition of strict sanctions, including civil monetary penalties and license revocation, when the producer engages in personal fraudulent acts in the business of insurance. See Comm'r

v. Prime Ins. Syndicate, Bickford, et al, OAL Dkt. No. 1168-05, First Order and Initial Decision on Motion for Summary Decision, (01/12/06), Final Decision and Order on First Partial Summary Decision (02/27/06), Second Order and Initial Decision on Motion for Summary Decision (05/12/06), Final Decision and Order on Second Partial Summary Decision (06/26/06) (Bickford, an insurance producer had her producer license revoked and she was fined \$5,000 for Producer Act violations for fraudulently failing to disclose her own personal driving record on an application for automobile insurance).

Next, the Department avers that revocation, not suspension, of Ms. Dobrek's producer license is the appropriate penalty. The Department argues that the Commissioner has previously found that maximum monetary penalties and "revocation is the appropriate sanction in all cases where producer licensees are found to have committed insurance fraud, but for those in which truly extraordinary mitigating factor are present." Commissioner v. Bellissima, OAL Dkt. No. BKI 10040-04, Initial Decision (01/13/04), Final Decision and Order (05/26/04), Initial Decision on remand (08/03/05), Final Decision (08/30/05) (License revoked and \$5,000 in fines imposed for violations of the Producer Act after producer had been found to have committed Fraud Act violations in a separate action for the same acts in Superior Court, in which he was also fined \$5,000).

Furthermore, the Department asserts that because of the strong public interest in regulating insurance producers, the Commissioner has consistently imposed fines and producer license revocation for New Jersey insurance producers that engage in fraudulent acts. See Commissioner v. Thomas Dobrek and Mr. Lucky Bail Bonds, Inc., OAL Dkt. No. BKI 00361-05, Initial Decision (12/26/06), Final Decision (03/26/07) (revoking Thomas Dobrek's insurance producer license and imposing monetary penalties totaling \$20,000 for violations of the Producer

Act for, amongst other things, making materially false statements in an application to an insurance company, in violation of N.J.S.A. 17:22A-40a(8)); Commissioner v. Martini , OAL Dkt. No. INS 1874-96, Initial Decision (04/18/97), Final Decision (06/10/97) (revoking the producer license and imposing a \$15,000 fine for Producer Act violations for committing insurance fraud by submitting a false claim to his insurance company); Commissioner v. Furman, OAL Dkt. No. BKI 3891-06, Initial Decision (06/21/07), Final Decision (09/17/07) (revoking the producer license and assessing civil penalties in the amount of \$5,000 for Producer Act violations, where the producer had previously settled an insurance fraud lawsuit with the OIFP for a separate \$5,000 civil penalty and for making false statements in connection with a life insurance application); Bakke v. Goncalves, OAL Dkt. Nos. BI 3188-03, BKI 3301-05, Initial Decision (12/03/03), Final Decision and Order (05/24/04), On Remand (02/15/06) (producer license revoked and fines assessed for Producer Act violations after same respondent found to have violated the Fraud Act in Superior Court).

Additionally, the Department disagrees with the ALJ's reading of Bickford, supra. According to the Department, the ALJ concluded from the Initial Decision in Bickford that mere license suspension for fraudulent acts by a producer is an acceptable penalty, however, it appears that the ALJ inadvertently overlooked that the Final Decision in Bickford modified the Initial Decision to order the sanction of license revocation and \$5,000 in Producer Act fines. The Final Decision in Bickford makes it clear that license revocation and civil penalties are appropriate sanctions for insurance producers that commit fraud. Ibid. The Department further avers that the ALJ in this matter noted that Ms. Dobrek's conduct and multiple violations of the Producer Act were more egregious than the respondent in Bickford.

Thomas Dobrek

The Department avers that the ALJ correctly finds that Mr. Dobrek falsely represented to Esurance Insurance Company by phone that he was Weiran Dobrek and that he was driving the insured vehicle at the time of the accident, in violation of the Fraud Act allegations contained in Count 1 of OTSC No. E13-01. The Department asserts, however, that the ALJ misquoted the language of the statutory violation charged in Count 2 of OTSC No. E13-01 that alleged that Mr. Dobrek violated N.J.S.A. 17:33A-4b (emphasis added). Specifically, while citing N.J.S.A. 17:33A-4b, the ALJ quotes N.J.S.A. 17:33A-4a(4)(b)¹ which is an application fraud provision (emphasis added).

Count 2 of OTSC No. E13-01 actually alleges that Mr. Dobrek knowingly assisted, conspired or urged Ms. Dobrek to violate the provisions of the Fraud Act by coaching her to make false statements to Esurance during the making of the claim for insurance benefits, in violation of N.J.S.A. 17:33A-4b (emphasis added). Although the ALJ correctly cites the Department's allegation contained in Count 2 of OTSC No. E13-01 in the Procedural History of the Initial Decision as a violation of N.J.S.A. 17:33A-4b, it is apparent that if the ALJ had correctly assessed the correct citation alleged in Count 2, she would have found that Mr. Dobrek violated the Fraud Act by conspiring, urging and/or assisting his wife to make a false claim to Esurance, in violation of N.J.S.A. 17:33A-4b.

Summary of Exceptions Requested

In sum, the Department recommends that the Commissioner take the following actions as to the Initial Decision:

¹ N.J.S.A. 17:33A-4(b) provides that it is a violation of the Fraud Act to "mak[e] any statement intended to be presented to any insurance company for the purpose of obtaining an insurance policy, knowing that the statement contains false or misleading information concerning any fact or thing material to an insurance application or contract."

Grant the Motion for Summary Decision against Ms. Dobrek in its entirety with respect to all counts of OTSC No. E12-55;

Grant the Motion for Summary Decision against Mr. Dobrek in its entirety with respect to both Counts 1 and 2 of OTSC No. E13-01;

Order revocation of Ms. Dobrek's insurance producer license rather than the suspension of her license for five years;

Adopt the monetary penalties as to Ms. Dobrek as recommended by the ALJ, \$7,500 in fines, and reimbursement of the Department's costs of investigation in the amount of \$675, for a total of \$8,175;

Adopt the civil penalties against Mr. Dobrek as recommended by the ALJ, \$5,000 in fines, reasonable attorney's fees of \$3,623.50 pursuant to N.J.S.A. 17:33A-5b, and a \$1,000 insurance surcharge pursuant to N.J.S.A. 17:33A-5.1, for a total of \$9,623.50; and

The Department withdraws its request that Mr. Dobrek's driver's license be suspended for one year for violations of the Fraud Act, pursuant to N.J.S.A. 39:6A-15, since the penalty prescribed therein is limited to court actions and not administrative actions.

LEGAL DISCUSSION

As noted in the Initial Decision, the Department bears the burden of proving the allegations in the Orders to Show Cause by a preponderance of the competent, relevant and credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as would lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Preponderance may be described as: "the greater weight of credible evidence in the case not necessarily dependent on the number of witnesses, but having the greater convincing power." State v. Lewis, 678 N.J. 47 (1975).

N.J.S.A. 52:14B-9 provides a party in a contested administrative case the opportunity for a hearing at which the party may present evidence and argument on all issues involved. Such matters, however, may be subject to summary decision. N.J.A.C. 1:1-12.5(b) provides the

standard to determine whether summary decision should be granted in a contested case. Specifically, the provision states that a summary decision may be rendered “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” Ibid. The rule also provides that “when a motion for summary decision is made and supported, an adverse party, in order to prevail must, by responding affidavit, set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid.

In Brill v. Guardian Life Ins. Co. of America, supra, the New Jersey Supreme Court clarified the summary judgment standard. The Court held that a determination as to 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 are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party. The court said:

The judge’s function is not himself (herself) to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. [citations omitted]. To send a case to trial, knowing that a rational jury can reach but one conclusion, is indeed worthless and will serve no useful purpose.

[Brill, supra, 142 N.J. at 541].

Motions for summary judgment in civil actions are considered under R. 4:46-2. It provides that the motion sought shall be granted if the evidence adduced shows there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. R. 4:46-2(b). An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the

motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact. R. 4:46-2(c). The Brill Court noted that “by its plain language, R. 4:46-2 dictates that a court should deny a summary judgment motion only where the party opposing the motion has come forward with evidence that creates a genuine issue as to any material fact challenged.” Brill, supra, 142 N.J. at 529.

OTSC E12-55 – Allegations Against Weiran Dobrek

OTSC No. E12-55 charges Weiran Dobrek with violations of the Producer Act, which governs the licensure of New Jersey insurance producers and empowers the Commissioner to suspend or revoke the license of, and fine, an insurance producer for violations of its provisions. OTSC No. E12-55 specifically charged Ms. Dobrek with: violating any insurance law(s) or regulation(s) of this State (2 violations); intentionally misrepresenting the terms of an actual or proposed application for insurance; using fraudulent or dishonest practices, or demonstrating incompetence or untrustworthiness in the conduct of insurance business (2 violations); committing any fraudulent act (2 violations); and failing to report an administrative action taken against her within 30 days of final disposition of the matter. See N.J.S.A. 17:22A-40a(2), (5), (8), (16) and N.J.S.A. 17:22A-47a, respectively.

Based upon the Summary Decision standard discussed above, I concur with the ALJ that Weiran Dobrek failed to adduce evidence that creates a genuine issue as to any material fact challenged and that summary decision is appropriate as to the allegations that Ms. Dobrek provided a false answer to an objective question in filling out the Esurance application (count 1); that Ms. Dobrek made misrepresentations in support of an insurance claim (count 2); and that Ms. Dobrek failed to report the consensual settlement of the OIFP action against her to the Commissioner (count 3), in violation of N.J.S.A. 17:22A-40a(16) and 17:22A-47a.

I disagree, however, with the ALJ's determination that the Department should not prevail as to the alleged violations of N.J.S.A. 17:22A-40a(8). First, as to Count 1 of OTSC No. E12-55, the ALJ found that Ms. Dobrek could not be found to violate N.J.S.A. 17:22A-40a(8) because the allegations did not arise out of Ms. Dobrek's capacity as an insurance producer. N.J.S.A. 17:22A-40a(8) provides that a producer may be penalized for "[u]sing fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business in this State or elsewhere." The ALJ interprets this provision to be limited to those instances of fraud in the conduct of the producer's business, not to a personal auto application. This interpretation of N.J.S.A. 17:22A-40a(8) is contrary to my reading of the statute and contrary to how the Department has historically interpreted the scope of this provision.

A licensed producer may violate the Producer Act and be subject to penalties for conduct related to personal insurance business. The language of N.J.S.A. 17:22A-40a(8) is not limited to the conduct of insurance business, and as such, I interpret it as providing that a producer may violate this section through fraudulent, coercive or dishonest practices whether in the business of insurance or not, and through the demonstration of incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business. Because of the high standards to which insurance producers are held, and the special knowledge they possess, it applies equally when licensees act as consumers of insurance coverage or in other capacities. See, Commissioner v. Pino, OAL Dkt. No. BK18070-02. Pino, BK1 8070-02, Initial Decision (09/11/03), Final Decision and Order (10/30/03) (Producer's theft of monies from cemetery association in his personal capacity as secretary/treasurer of the association constituted violations of Producer Act warranting revocation). When considering an individual's fitness for continued licensure as an

insurance producer based upon his or her having engaged in fraudulent or dishonest conduct, the matter must be viewed from the broad prospective of what is in the public interest and what is necessary to protect the general welfare. The narrow perspective of whether a licensee's fraudulent or dishonest behavior were evidenced only by misconduct directly related to his or actions as a producer would require ignoring significant indicators of an individual's general character.

Moreover, previous decisions have taken the broad prospective and clearly establish that an insurance producer's behavior regarding his or her personal insurance matters or other aspects of personal conduct are relevant to his or her ability to act as a licensed producer in this State. See Commissioner v. Prime Ins. Syndicate, Bickford, et al, supra. (producer license revoked and \$5,000 fine imposed for failing to disclose personal driving record on personal automobile insurance application); Commissioner v. Nasir, OAL Dkt. No. BKI 2335-03, Initial Decision (03/01/05), after App. Div. remand Final Decision (3/26/08) (license revocation and \$17,000 fine ordered for making false statements to an insurance carrier in support of personal benefits claim); New Jersey Dep't of Ins. v. Rosenblatt, 96 N.J.A.R.2d (INS) 102, Initial Decision (08/06/96), Final Decision (09/23/96) (license revocation and \$4,000 fine ordered for altering estimates for repairs to his home); and, Commissioner v. Pino, supra. In light of this, I hereby modify the Initial Decision based upon the undisputed facts to find that Ms. Dobrek's conduct also violated N.J.S.A. 17:22A-40a(8).

Next, I disagree with the legal conclusion that a credibility determination is necessary as to whether Ms. Dobrek intentionally misrepresented the terms of an application for insurance in violation of N.J.S.A. 17:22A-40a(5). The ALJ found that it was undisputed that Ms. Dobrek falsely listed her marital status as single because the Dobreks were married at the time. The ALJ

found, however, that the parties offered opposing evidence as to whether the misrepresentation was intentional. The ALJ noted that the Department offered evidence that Mr. Dobrek was registered to vote at the policy address, received mail there, and answered the telephone there on one occasion. The ALJ also noted that the Dobreks certified that Mr. Dobrek was living in Woodbridge at the time, the insurance application did not have a “separated” option, and Ms. Dobrek had difficulty understanding the online form since English is her second language. None of these assertions by the Dobreks create a genuine issue as to any material fact that necessitates a credibility determination or hearing.

First, N.J.S.A. 17:22A-40a(5) - the provision at issue here - only requires intentional misrepresentation of the terms of an insurance contract. I interpret that provision as requiring that the misrepresentation of the insurance contract and/or application information to not have been a mistake. This provision does not require a subjective analysis of the producer’s state of mind as to why the false answer to the application question was provided. This is because a fraudulent act under the Producer Act, including an intentional misrepresentation of policy terms and/or an application, does not require intent to deceive. See Commissioner v. Pino, OAL Dkt. No. BKI8070-02. Pino, BKI 8070-02, Initial Decision (09/11/03), Final Decision and Order (10/30/03), <<http://njlaw.rutgers.edu/collections/oal/search.html>> (there is no mens rea requirement for violations of N.J.S.A. 17:22A-1 et seq., the predecessor of the Producer Act); Commissioner v. Uribe, OAL Dkt. No. BKI07363-07, Initial Decision, 2010 N.J. Agen LEXIS 797 at *17-18 (12/28/10), Final Decision and Order, 2011 N.J. Agen LEXIS 734 (9/28/11). Under this legal analysis, the conduct of a licensed producer itself is the determinative factor as to whether or not a violation occurred. Ms. Dobrek knew she was legally married at the time she filled out the application stating that she was “single” and did not disclose her husband as a

potential driver of the insured vehicle. This conduct demonstrates the intentional, not mistaken, nature of her actions, and therefore I modify the Initial Decision to also find that Ms. Dobrek's false answer on the insurance application also constituted a violation of N.J.S.A. 17:22A-40a(5).

In the Conclusion and Order of the Initial Decision, the ALJ did not make a specific finding as to a violation of N.J.S.A. 17:22A-40a(16) (committing any fraudulent act) as alleged in Count 1 of OTSC No. E12-55 (application fraud). However, in the discussion of whether Ms. Dobrek's actions constituted a violation of N.J.S.A. 22A-40a(16), the ALJ specifically found that Ms. Dobrek provided a false answer to an objective question in filling out the Esurance application (count 1), and that summary decision is appropriate. I agree with these findings and I FIND that such conduct constitutes a violation of N.J.S.A. 17:22A-40a(16) as alleged in Count 1 of OTSC NO. E12-55.

In addition, Ms. Dobrek's argument that she had difficulty understanding the online form since English is her second language does not create a genuine issue as to any material fact. The fact that English is her second language does not absolve Ms. Dobrek from her obligations to answer truthfully. See Rashabov v. Alfuso, 2010 N.J. Super Unpub. LEXIS 2363 (App. Div. 2010) (The inability of plaintiff to speak English did not absolve him of his obligations under a contract. Even where a contracting party cannot read, there is a presumption against the signer of a contract unless the other party engaged in fraud or misconduct in procuring the contract. A party to a contract must take the opportunity to understand its terms before signing it. (citations omitted.)). It was Ms. Dobrek's obligation to assure herself that she understood what she was answering. Ibid. In fact, Ms. Dobrek should have been acutely aware of this requirement to be forthcoming on the application given that she was a licensed insurance producer applying for personal insurance.

Next, I disagree with the conclusion that the Department failed to articulate a provision of an insurance law that Ms. Dobrek violated. N.J.S.A. 17:22A-40a(2) provides that the Commissioner can impose penalties if an insurance producer violates “any insurance laws.” The Department alleged, and the ALJ found, a violation of N.J.S.A. 17:22A-40a(16) as alleged in Count Two of OTSC No. E12-55. Moreover, as discussed above, I find violations of N.J.S.A. 17:22A-40a(5), (8) and (16) as alleged in Count One and N.J.S.A. 17:22A-40a(8) as alleged in Count Two, all of which are provisions of the insurance law. Thus, I find that Ms. Dobrek also violated N.J.S.A. 17:22A-40a(2) as alleged in both Count One and Count Two of OTSC No. E12-55.

For these reasons, I reject the ALJ’s Summary Decision denial of the alleged violations of N.J.S.A. 17:22A-40a(2), (5), (8) and (16), as articulated in Counts 1 and 2 of OTSC No. E12-55, and modify the Initial Decision as discussed above.

Penalty against Weiran Dobrek

With respect to the appropriate action to take against Ms. Dobrek’s insurance producer license, I find that the record is more than sufficient to support license revocation and, in fact, compels the revocation of Ms. Dobrek’s license, rather than the license suspension recommended by the ALJ. The public in general is adversely affected in a significant way by insurance fraud. New Jersey views insurance fraud as a serious problem to be confronted aggressively. Liberty Mutual v. Land, 2010 N.J. Super. Unpub. LEXIS 89, at *15 (App. Div. 2010). New Jersey has a particularly strong public policy against the proliferation of insurance fraud. Palisades Safety and Insurance Association v. Bastien, 175 N.J. 144, 150 (2003). The strict regulation of insurance producers and the vigorous enforcement of our insurance laws further the public interest. See, Legislative Findings for P.L. 2003, c. 89. In decisions by prior Commissioners in

similar cases, revocation has consistently been imposed upon licensees who have personally engaged in fraudulent acts. Both insureds and insurers must place their trust in the information insurance producers convey to them. There can be no compromise in the level of honesty and integrity required of these professionals. See also Bakke v. Ladas, supra, and Commissioner v. Nicolo, supra, which discuss the public policy and legal grounds that support the conclusion that in only very rare cases involving extraordinary mitigating factors would it be appropriate to refrain from revoking the license of an insurance producer licensee found to have committed insurance fraud.

A licensee's honesty, trustworthiness and integrity are of paramount concern, since an insurance producer acts as a fiduciary to both the consumers and insurers they represent. The nature and duty of an insurance producer "calls for precision, accuracy and forthrightness." Fortunato v. Thomas, 95 N.J.A.R. (INS) 73 (1993). In addition, a licensed producer is better placed than a member of the public to defraud an insurer. Hence, a producer is held to a high standard of conduct, and should fully understand and appreciate the effect of fraudulent or irresponsible dealing on the industry and on the public.

Our strong policy is to instill public confidence in both insurance professionals and the industry as a whole. In re Parkwood Co., 98 N.J. Super. 263 (App. Div. 1963). Courts have recognized that the insurance industry is strongly affected with the public interest and the Commissioner is charged with the duty to protect the public welfare. See Sheeran v. Nationwide Mutual Insurance Company Inc., 80 N.J. 548 (1979). As evidenced by prior decisions, only the existence of extraordinary mitigating factors can form a basis for withholding the sanction of license revocation in cases involving direct personal conduct on the part of a licensee that constitutes fraud, and particularly insurance fraud. See Commissioner v. Thomas Dobrek and

Mr. Lucky Bail Bonds, Inc., supra. Since the record establishes that no such factors are present in this matter, license revocation is the appropriate penalty for Ms. Dobrek's actions.

Under Kimmelman, supra, certain factors are to be examined when assessing administrative monetary penalties such as those that may be imposed pursuant to N.J.S.A. 17:22A-45 upon insurance producers. The factors include: (1) the good faith or bad of the violator; (2) the violator's ability to pay; (3) the amount of profit obtained from the illegal activity; (4) injury to the public; (5) duration of the illegal conduct; (6) existence of criminal actions and whether a large civil penalty may be unduly punitive if other sanctions have been imposed; and (7) past violations. Kimmelman, supra, 108 N.J. at 137-139.

The record herein indicates the following with respect to these factors. I agree with the ALJ's finding that Weiran Dobrek acted in bad faith. Ms. Dobrek was a licensed producer and demonstrated bad faith through her submission of a false and misleading insurance application to an insurer as well as providing false or misleading information in support of a claim to an insurer. Ms. Dobrek failed to live up to the high standards of an insurance producer. Although she asserts that the loss of her license will be a hardship, Ms. Dobrek failed to provide specific evidence of her inability to pay civil penalties. Ms. Dobrek had the benefit of the issuance of an auto policy, at presumably a lower rate, because of her misrepresentations to the insurer that she was single, that Mr. Dobrek whose driver's license was suspended at the time did not reside at the residence. In the submission of a claim, Ms. Dobrek also misrepresented that she was driving the insured vehicle at the time of the accident because she knew that her husband was not supposed to be using the vehicle. Ultimately, the policy was rescinded through the anti-fraud efforts of the insurer. As noted by the ALJ, this is neither a mitigating nor aggravating factor. As a result of Ms. Dobrek's conduct, harm occurred to both the insurance company and the insurance buying

public at large. The cost of insurance fraud, including the losses and costs of investigation incurred by insurers, are passed onto policyholders. Plus, the public's confidence in the insurance industry is eroded when the integrity of insurance producers is breached. The uncontested record indicates that this was an isolated occurrence of brief duration; that Ms. Dobrek has no history of other insurance law violations; and that Ms. Dobrek was not prosecuted criminally for her conduct. The record also indicates that on December 16, 2009, Ms. Dobrek entered into a civil Consent Order with the OIFP which resolved the OIFP's allegations that she made misrepresentations on both her insurance application and in her statements in support of an insurance claim, in violation of the Fraud Act. Ms. Dobrek agreed to pay a civil penalty of \$5,000.

In light of the above Kimmelman analysis and based on the violations I have concluded that she committed, pursuant to N.J.S.A. 17:22A-26 et seq., I concur that the \$7,500 fine recommended by the ALJ is fully warranted, not excessive or unduly punitive, and succeeds to the required level of opprobrium.

OTSC E13-01 – Allegations Against Thomas Dobrek

OTSC No. E13-01 charges Thomas Dobrek with violations of the Fraud Act, which empowers the Commissioner to impose penalties for violations of its provisions. OTSC No. E13-01 specifically charged Mr. Dobrek with: presenting a claim for payment pursuant to an insurance policy knowing that the statement contained any false or misleading information concerning any fact material to the claim; making a statement to an insurance company in support of a claim knowing it to be false or misleading; concealing or knowingly failing to disclose an event which affects anyone's entitlement to an insurance benefit, or the amount of a benefit or payment to which they are entitled; concealing or knowingly failing to disclose any

evidence which may be relevant to a finding that a person made a statement in applying for auto insurance knowing that information to be false; and knowingly assisting, conspiring with or urging any person to violate the terms of the Fraud Act. See N.J.S.A. 17:33A-4a(1), (2), (3), (5) and N.J.S.A. 17:33A-4b respectively.

Based upon the Summary Decision standard discussed above, I concur with the ALJ that Thomas Dobrek failed to adduce evidence that creates a genuine issue as to any material fact challenged and that summary decision is appropriate as to the allegations that Mr. Dobrek: falsely stated that his name was “Weiran Dobrek” in support of a claim to an insurer; and falsely represented that Weiran Dobrek was the driver of the insured auto at the time of the accident, in violation of N.J.S.A. 17:33A-4a(1), (2), (3) and (5).

The ALJ declined to find that Mr. Dobrek committed the allegations in Count 2 of OTSC No. E13-01, specifically that he violated N.J.S.A. 17:33A-4b. It appears, as noted by the Department in its Exceptions, that the ALJ inadvertently quoted the language constituting a violation of N.J.S.A. 17:33A-4a(4)(b)², which was not alleged in OTSC No. E13-01, instead of N.J.S.A. 17:33A-4b, which was alleged. N.J.S.A. 17:33A-4b provides that it is a violation of the Fraud Act if a person “knowingly assists, conspires with, or urges any person or practitioner to violate any of the provisions of [the Fraud Act].” The undisputed evidence in the record, as found by the ALJ, support a finding of a violation of N.J.S.A. 17:33A-4b. Specifically, the ALJ describes the recorded interview of Ms. Dobrek wherein Mr. Dobrek is heard coaching Ms. Dobrek to make false statements to the insurer in support of her claim for benefits, and noted that Mr. Dobrek coordinated with Ms. Dobrek as evidenced by that recorded interview. Initial

² N.J.S.A. 17:33A-4a(4)(b) provides that it is a violation of the Fraud Act if a person makes a statement to an insurance company 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.”

Decision, supra, at *19. I find that this constitutes a violation of N.J.S.A. 17:33A-4b, and hereby modify the Initial Decision in this regard.

Penalty against Thomas Dobrek

The record herein indicates the following with respect to the Kimmelman factors. Kimmelman, supra, 108 N.J. at 137-139. Thomas Dobrek acted in bad faith. Until his license was revoked in 2007, Mr. Dobrek was previously licensed as a New Jersey insurance producer. Mr. Dobrek demonstrated bad faith through his providing of false or misleading information in support of a claim to an insurer, as well as coaching Ms. Dobrek to provide false information. Mr. Dobrek failed to provide specific evidence of his inability to pay civil penalties. As a result of Mr. Dobrek's conduct, harm occurred to both the insurance company and the insurance buying public at large. The cost of insurance fraud, including the losses and costs of investigation incurred by insurers, are passed onto policyholders. The uncontested record indicates that this was an isolated occurrence of brief duration; that Mr. Dobrek was the subject of a similar Department action in 2007 resulting in the assessment of monetary penalties and producer license suspension (see Commissioner v. Thomas Dobrek and Mr. Lucky Bail Bonds, Inc., supra.); and that Mr. Dobrek was not prosecuted criminally for his conduct.

Based on this analysis of the Kimmelman factors and the violations I have found, pursuant to N.J.S.A. 17:33A-1 et seq., I concur that the \$5,000 fine for violations of the Fraud Act, a \$1,000 Fraud Surcharge pursuant to N.J.S.A. 17:33A-5.1, and reimbursement of attorneys' fees to the Department of \$3,623.50, all as recommended by the ALJ, are fully warranted, not excessive and succeed to the required level of opprobrium for this conduct.

SUMMARY OF FINDINGS

I FIND that the Summary Decision against Weiran Dobrek shall be granted to the Department with respect to all Counts of OTSC No. E12-55, including all statutory violations alleged in each count, and the Initial Decision shall be modified accordingly. I FIND that Weiran Dobrek made false statements to an insurance company in support of an application for auto insurance and in support of a claim for insurance benefits, and failed to report the administrative action by the OIFP to the Department.

I further FIND that the revocation of Weiran Dobrek's insurance producer license is appropriate and the Initial Decision shall be modified accordingly.

Based upon my application of the Kimmelman factors to the record, I ADOPT the ALJ's recommendations as to Weiran Dobrek with regard to the imposition of fines totaling \$7,500 for her violations of the Producer Act and reimbursement of the Department's costs of investigation and prosecution of this matter totaling \$675. The violations of the Producer Act alleged in OTSC No. E12-55 require a significant monetary penalty in order to adequately protect the public interest by deterring similar conduct.

I further FIND that the Summary Decision against Thomas Dobrek shall be granted to the Department with respect to all counts and statutory violations of OTSC No. E13-01, and the Initial Decision shall be modified accordingly. I FIND that Thomas Dobrek made false statements to an insurance company in support of a claim for benefits and that he assisted, conspired and urged his wife to violate the Fraud Act.

Based upon my application of the Kimmelman factors to the record, pursuant to N.J.S.A. 17:33A-1 et seq., I ADOPT the ALJ's recommendations as to Thomas Dobrek with regard to the imposition of fines totaling \$5,000 for his violations of the Fraud Act, imposition of a \$1,000

Fraud Surcharge pursuant to N.J.S.A. 17:33A-5.1, and reimbursement of the Department's attorney's fees totaling \$3,623.50 pursuant to N.J.S.A. 17:33A-5c.

Finally, in its exceptions, the Department withdraws its request that Thomas Dobrek's driver's license be suspended for one year for violations of the Fraud Act, pursuant to N.J.S.A. 39:6A-15, since the penalty prescribed therein is limited to court actions and not administrative actions. Therefore, the ALJ's recommended suspension of Thomas Dobrek's driver's license is hereby rejected.

CONCLUSION

Having carefully reviewed the Initial Decision, the Exceptions and the entire record herein, I hereby partially ADOPT the Findings and Conclusions as set forth in the Initial Decision. Specifically, I ADOPT the conclusions that Ms. Dobrek violated the Producer Act as charged in OTSC No. E12-55, and violated N.J.S.A. 17:22A-40a(16) and 17:22A-47a as was found therein. I MODIFY the Initial Decision and conclude that she has also violated N.J.S.A. 17:22A-40a(2), (5), (8) and (16) as alleged in OTSC No. E12-55. I also ADOPT the ALJ's recommendations that Ms. Dobrek be ORDERED to pay fines totaling \$7,500 and to reimburse the Department \$675 for its investigation costs pursuant to the Producer Act. I MODIFY the Initial Decision to impose the revocation of Ms. Dobrek's license.

Furthermore, I ADOPT the conclusions that Mr. Dobrek violated the Fraud Act as charged in OTSC No. E13-01, and violated N.J.S.A. 17:33A-4a(1), (2), (3) and (5) as was also alleged therein. I MODIFY the Initial Decision and conclude that he has also violated N.J.S.A. 17:33A-4b as alleged in OTSC No. E13-01. I ADOPT the ALJ's recommendations that Mr. Dobrek be ORDERED to pay fines totaling \$5,000 for the Fraud Act violations, to reimburse the Department for its reasonable attorney's fees totaling \$3,623.50 pursuant to N.J.S.A. 17:33A-5c,

and to pay a \$1,000 insurance surcharge pursuant to N.J.S.A.17:33A-5.1. I further MODIFY the Initial Decision, and, for the reasons stated above, I REJECT the suspension of Thomas Dobrek's driver's license as was recommended by the Initial Decision.

IT IS SO ORDERED on this 15th day of January, 2015.



Peter L. Hartt
Director of Insurance
Acting Commissioner

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