

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DOCKET NO.: BKI-06530-14
AGENCY DOCKET NO.: OTSC #E14-44

KENNETH E. KOBYLowski,)
COMMISSIONER OF BANKING)
AND INSURANCE,)

Petitioner,)
v.)

MIRIAM CHARLES,)

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 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 all powers expressed or implied therein, for the purpose of reviewing the Initial Decision of Administrative Law Judge Michael Antoniewicz (“ALJ”) decided on March 2, 2015 (“Initial Decision”). In that Decision, the ALJ granted summary decision to the Department of Banking and Insurance (“the Department”) against Miriam Charles (“Respondent” or “Charles”) on all three of the counts alleged in the Department’s Order to Show Cause No. E14-44 (“OTSC”), and recommended revocation of her New Jersey insurance producer license and the imposition of civil penalties and the costs of investigation for the offenses.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On April 10¹, 2014, the Department issued the OTSC against Miriam Charles seeking to revoke her insurance producer license and to impose civil penalties and costs of investigation for alleged violations of the Producer Act. In the OTSC, the Department alleges that Charles engaged in the following activities in violation of the insurance laws of this State:

Count 1 – On ten (10) separate occasions between February 17, 2011 until July 23, 2013, Charles had collected money from insureds on behalf of her employer, Branson Insurance Agency, and had not deposited the money into Branson's trust account. Thereby, Charles improperly withheld, misappropriated, or converted monies or properties received in the course of doing business, in violation of N.J.S.A. 17:22A-40a(2), (4), (8) and (16);

Count 2 – Charles was charged by criminal complaint with committing the offense of theft by unlawfully taking or exercising control over certain movable property, to wit, \$4,045.40 in cash belonging to Jesse M. Branson Sr. with the intent to deprive the owner thereof. Specifically, by taking ten cash payments from customers and failing to deposit the cash into the company trust account, in violation of N.J.S.A. 2C:20-3A, 3rd Degree. Charles failed to notify the Commissioner within thirty (30) days of the filing or disposition of formal criminal charges against her, in violation of N.J.S.A. 17:22A-40a(18); and,

Count 3 – Charles failed to respond to the Department's two requests for documentation in connection with the circumstances related to her termination for cause from Allstate, in violation of N.J.S.A. 17:22A-40a(18).

On May 23, 2014, Charles submitted a correspondence to the Department wherein she admitted to and denied some of the allegations set forth in the OTSC and requested a hearing. The Department transmitted the contested case to the Office of Administrative Law ("the OAL") on May 29, 2014, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

¹ The Initial Decision states that the OTSC was issued on April 14, 2015. Upon review, however, the OTSC was issued on April 10, 2014. Initial Decision at 1.

On October 23, 2014, the Department moved for a Summary Decision against Charles. A telephone conference was held on December 2, 2014. During the conference, Charles was granted an extension of time to file her opposition to the Department's motion until January 19, 2015. Subsequently, Charles was granted another extension to file her opposition until February 17, 2015. No opposition was received from Charles. As such, the Initial Decision was rendered on the unopposed motion.

On March 2, 2015, the ALJ granted Summary Decision on all three counts alleged in the OTSC and recommended revocation of Charles' insurance producer license, imposition of a \$15,000 civil monetary penalty, and \$212.50 in investigation costs.

ALJ'S FINDINGS OF FACT

The ALJ found the following relevant facts in his grant of summary decision. From September 11, 2003 until July 29, 2013, Charles was employed by Branson Insurance Agency ("Branson"). Initial Decision at 2. On ten separate occasions between February 17, 2011 and July 23, 2013, Charles collected money from insureds on behalf of Branson and did not deposit the money into the Branson's trust account. Id. at 2-3. Charles misappropriated a total of \$4,045.40 in insurance premiums from Branson and kept said misappropriated funds for her personal use. Id. at 3. On August 15, 2013, Charles was charged by a criminal complaint with committing

the offense of theft by unlawfully taking or exercising control over certain moveable property, to wit: \$4,045.40 in cash belonging to Jess M. Branson, Sr., with the intent to deprive the owner thereof. Specifically by taking ten cash payments from customers and failing to deposit the cash into the company trust account, in violation of N.J.S.A. 2C:20-3A, 3rd Degree. Ibid.

After receiving notice from Allstate that Charles was terminated, the Department on September 17, 2013, contacted Charles and requested a written statement regarding the circumstances related to her termination for cause. Ibid. Charles did not respond to the Department's request for information. Ibid. The Department incurred \$212.50 in investigation costs in connection with this matter. Ibid. Charles failed to notify the Commissioner within thirty days of the filing of formal criminal charges against her. Ibid. On February 24, 2014, the criminal charges were dismissed after Charles paid \$4,045.40 in restitution to Branson. Ibid.

ALJ'S LEGAL ANALYSIS AND CONCLUSIONS

The ALJ noted that N.J.A.C. 1:1-12.5 governs motions for summary decisions, which mirrors the language of New Jersey Court Rule 4:46-2, the rule governing motions for summary judgment. Pursuant to these rules, a case may be dismissed before it is heard if, based on the papers and discovery that have been filed, it can be decided "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." 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 Am., 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).

ALJ'S Findings as to the Allegations against Miriam Charles

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, OAL Dkt. No. BKI 6740-01, Initial Decision, (06/14/02), Final Decision and Order (08/02/02). 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, OAL Dkt. No. BKI 0947-02, Initial Decision, (02/05/04), Final Decision and Order (06/22/04).

Based on those standards, the ALJ determined that the Department should prevail on all three counts of the OTSC. As to Count One of the OTSC, the ALJ found that Respondent admitted in her request for a hearing and in discovery responses that between February 17, 2011, and July 23, 2013 she misappropriated a total of \$4,045.40 in insurance premiums from Branson, and kept the insurance premiums for her personal use.

As to the allegations in Count Two of the OTSC, the ALJ found that Charles failed to notify the Commissioner within thirty days of formal criminal charges against her, in violation of N.J.S.A. 17:22A-40a(18). The ALJ noted that in Charles' request for a hearing, she did not dispute this allegation and instead asserted that she did not "knowingly" fail to notify the Commissioner as she was "unaware" that she was required to do so. Initial Decision at 6. The ALJ found that Charles' claim of ignorance regarding her obligation to notify the Commissioner within thirty days of formal criminal charges being filed against her is no defense to this action because N.J.S.A. 17:22A-40a(18) contains no requirement of an intentional act and every person is presumed to know the law, particularly professional licensees, such as insurance producers, who operate in highly regulated fields. State v. Moran, 202 N.J. 311, 320 (2010) (citing Barlow v. U.S., 32 U.S. 404, 411, 8 L.Ed. 728, 731 (1833): "ignorance of the law will not excuse any person, either civilly or criminally"); Graham v. N.J. Real Estate Commission, 217 N.J. Super. 130, 138 (App. Div. 1987) (holding that a licensee is presumed to know the requirement to maintain his/her license).

Additionally, the ALJ determined that when Charles requested a license and was then issued a license, she should have reviewed the statutes and regulations applying to that license as well as the business in which she was about to engage. Moreover, the ALJ noted that becoming licensed as an insurance producer requires numerous hours of pre-licensing education and to maintain a producer license requires twenty-four hours of continuing education credits every two years. The ALJ found that Charles became and remained licensed as an insurance producer for almost a decade, during which time she had more than enough time to become familiar with the responsibilities and obligations surrounding her producer license. Accordingly, the ALJ found that Charles' claim of ignorance regarding the applicable laws is no defense to this action and it

is clear that she never contacted the Commissioner in order to alert him of the formal criminal charges levied against her. Lastly, the ALJ noted that the fact that the charges were ultimately dismissed is of no consequence as the statute clearly applies to charges made against the individual and not strictly to convictions. The ALJ found that in this case, there is no dispute that theft charges were levied against Charles.

As to the allegations in Count Three of the OTSC, the ALJ found that Charles failed to cooperate with the Department's request for information related to the circumstances surrounding her termination for cause from Allstate, in violation of N.J.A.C. 11:17A-4.8². The ALJ noted that it is undisputed that Charles was terminated by her carrier, Allstate. The ALJ found that the Department claimed to have sent Charles a letter on two separate occasions requesting information regarding her termination from Allstate for theft and that Charles admits to receiving a letter from the Department, dated September 17, 2013, regarding her termination for cause from Allstate. Initial Decision at 7. In addition, the ALJ found that Charles admitted that she did not respond to that letter and that her defense is that she did not "knowingly violate the charge of not responding to the New Jersey Department of Banking." Ibid. The ALJ also noted that Charles' claims that she "assumed once the criminal case was dismissed any additional information requested from New Jersey Department of Insurance would be notified as well." Ibid.

The ALJ found that Charles' defense does not comply with a plain reading of the applicable statute, N.J.A.C. 11:17A-4.8, which states that "[a]n insurance producer shall reply, in

²Count Three in the OTSC alleges that Charles violated N.J.S.A. 17:22A-40a(18) as Charles did not "respond to the Department's request for documentation in connection with the filing of formal criminal charges against her." However, in its Motion for Summary Decision, the Department argued that the conduct alleged and proven related to Count Three constitutes a violation of N.J.A.C. 11:17A-4.8.

writing, to any inquiry of the Department 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.” The ALJ found that said statute contains no requirement that a producer knowingly fail to act and that, in addition, ignorance of the statutory requirements that accompany licensure as an insurance producer is not a defense. See Moran, supra, 202 N.J. 311; see also Graham, supra, 217 N.J. Super. 130. Accordingly, the ALJ found that Charles did not present a legally or factually viable defense for her failure to respond to the Department’s inquiries.

ALJ’s Findings as to the Penalty against Miriam Charles

The ALJ determined that the imposition of civil monetary penalties, costs and the revocation Charles’ insurance producer license were appropriate in this matter. The ALJ noted that because of the strong public interest in regulating insurance producers, the Commissioner has consistently imposed revocation against insurance producer licensees that engage in fraudulent acts. Commissioner v. Hohn, OAL Dkt. No. BKI 12444-11, Initial Decision (11/01/12), Final Decision and Order (03/18/13). Only the rarest of mitigating factors will preclude license revocation for those who directly commit fraud. Commissioner v. Goncalves, OAL Dkt. No. BKI 31188-03, Initial Decision (12/03/03), Final Decision and Order (05/24/04), OAL Dkt. No. BKI 3301-05, On Remand, Initial Decision (11/17/05), Final Decision and Order (02/15/06). Moreover, the ALJ noted that the Commissioner has consistently held that misconduct involving "misappropriation of premium monies, bad faith and dishonesty compels license revocation." Commissioner v. Strandskov, OAL Dkt. No. BKI 03451-07, Initial Decision (09/25/08), Final Decision and Order (02/04/09). The ALJ found that the actions of Charles are clear and demand revocation. Initial Decision at 9.

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: Charles did not act in good faith and failed to live up to the high standards required of an insurance producer; Charles failed to provide sufficient information to determine whether she lacks the ability to pay the civil monetary penalty; Charles clearly profited from her illegal actions as she took and placed in her own pocket \$4,045.50 from her employer; there is a risk of injury to the public because fraudulent acts are inimical to the conduct of the insurance business; the duration of the illegal activity by Charles was a period of more than two years; penalties issued in this matter are not duplicative because although Charles was charged criminally, the charges were dropped when she paid restitution; and Charles does not have any prior violations of the Producer Act. Based upon this analysis, the ALJ determined that \$15,000 in civil monetary penalties was appropriate in this case. The ALJ also determined that imposition of the costs of investigation of \$212.50 were also appropriate pursuant to N.J.S.A. 17:22A-45c.

EXCEPTIONS

On March 13, 2015, the Office of the Attorney General on behalf of the Department, submitted an Exception to the Initial Decision. Charles did not submit any exceptions.

The Department concurs with the Initial Decision of the ALJ recommending revocation of Charles' insurance producer license, and the imposition of a civil monetary penalty of \$15,000 and costs of \$212.50. However, the Department requested that a minor modification be made to the Initial Decision. On page eleven, third full paragraph, the Initial Decision notes that a "suspension of [Miriam Charles'] license is appropriate." (emphasis added). However, the Initial

Decision goes on to state that “[a]ccordingly, the fine and the revocation of her license as requested by the Department are warranted.” (emphasis added). On page twelve of the Initial Decision, the ALJ again ordered the revocation of Charles’ license. Therefore, as the ALJ clearly determined revocation was the appropriate sanction, and in the interest of clarity, the Department requested that the recommendation that Charles’ insurance license is revoked should be consistently reflected throughout the decision.

DISCUSSION

For all of the reasons set forth in the Initial Decision, I concur that summary decision is appropriate as to all three Counts of the OTSC issued against Respondent Charles. As found by the ALJ, Charles failed to adduce evidence that creates a genuine issue as to any material fact and her defenses as plead fail as a matter of law. Consequently, I hereby ADOPT the ALJ’s undisputed factual findings and grant of summary decision as to the allegations that Charles misappropriated insurance premiums on ten separate occasions (count one); that Charles failed to notify the Department within thirty days of the filing of formal criminal charges against her (count two); and that Charles failed to respond to the Department’s request for documentation related to the circumstances of her termination for cause from Allstate (count three).

I make the following clarifications to the Initial Decision. First, as to Count One, the ALJ found that Charles admitted in her Request for Hearing and in her discovery responses, that on ten separate occasions, between February 17, 2011, and July 23, 2013, she misappropriated a total of \$4,045.40 in insurance premiums from her employer. I agree with those findings; however, the ALJ failed to specifically identify the insurance law provisions violated by this conduct. Therefore, I hereby supplement the Initial Decision to FIND that such conduct constitutes a violation of N.J.S.A. 17:22A-40a(2) (violated an insurance law or regulation),

N.J.S.A. 17:22A-40a(4) (improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business), 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) and N.J.S.A. 17:22A-40a(16) (committing any fraudulent act), as charged in the OTSC.

Next, when discussing Count Three of the OTSC, the ALJ noted that the Department “alleges that Charles failed to respond to the Department’s request for information.” Initial Decision at 7. The ALJ found that Charles admitted to not responding to the Department’s requests. Ibid. As a result of such conduct, as argued by the Department in its Motion for Summary Decision, the ALJ determined that Charles violated N.J.A.C. 11:17A-4.8, which states that “[a]n insurance producer shall reply, in writing, to any inquiry of the Department 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.” However, Count 3 of the OTSC alleges that by failing to respond to the Department’s requests, Charles violated N.J.S.A. 17:22A-40a(18); it does not allege a violation of N.J.A.C. 11:17A-4.8. N.J.S.A. 17:22A-40a(18) states that probation, suspension, revocation or the refusal to issue or renew an insurance producer’s license is permissible if an insurance producer fails “to notify the commissioner within 30 days of his conviction of any crime, indictment or the filing of any formal charges...or failing to supply any documentation that the [C]ommissioner may request in connection therewith.” (emphasis added). The Department requested information concerning Respondent’s termination from Allstate for theft. Respondent admitted that she did not respond to the letter dated September 17, 2013 from the Department. Therefore, it appears that N.J.S.A. 17:22A-40a(18) is inapplicable to the facts pled in Count 3 of the OTSC.

N.J.A.C. 1:1-6.2(a) provides that “[u]nless precluded by law or constitutional principle, pleadings may be freely amended when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice.” Prior Commissioners have permitted such amendments. For example, in Commissioner v. Furman, OAL Dkt. No. BKI 3891-06, Initial Decision (06/21/07), Final Decision and Order (09/17/07), the respondent’s supplying of false information to an insurer was not alleged in the Order to Show Cause. However, the respondent admitted to supplying said false information during cross examination. Accordingly, the Commissioner cited to N.J.A.C. 1:1-6.2 and concluded that “the pleadings in this case should be modified to conform with the evidence on the record and that Furman committed violations of N.J.S.A. 17:22A-40a(2), (7) and (8) by submitting to Citizen’s his November 20, 2001 memorandum.” Ibid.

Here, in its Motion for Summary Decision, the Department argued that the conduct as alleged in Count Three of the OTSC constituted a violation of N.J.A.C. 11:17A-4.8, and the Respondent had the opportunity to respond to the allegation. Respondent was on notice as to the factual basis in Count Three as alleged in the OTSC, she admitted her failure to respond to one Department request, and she had notice of the correct regulatory citation violated in the Department’s Motion for Summary Decision. Thus, the OTSC in this matter should be conformed to reflect the proofs and the correct regulatory citation. I agree with the ALJ’s determination that Charles’ failure to respond to the Department’s request constitutes a violation of N.J.A.C. 11:17A-4.8, and I AMEND the OTSC accordingly. In addition, I FIND that Charles’ failure does not violate N.J.S.A. 17:22A-40a(18), as stated in Count Three of the OTSC.

For these reasons, I modify the Initial Decision as discussed above.

Penalty against Miriam Charles

With respect to the appropriate action to take against Charles' insurance producer license, I agree with the ALJ's determination that license revocation is appropriate considering the severity of Charles' actions. Because of the strong public interest in regulating insurance producers, revocation has consistently been imposed against the licenses of New Jersey insurance producers that engage in fraudulent acts. Commissioner v. Hohn, supra. Only the rarest of mitigating factors will preclude license revocation for those who directly commit fraud. Commissioner v. Goncalves, supra.

Similarly, revocation has consistently been imposed upon licensees who have personally engaged in misconduct involving "misappropriation of premium monies, bad faith and dishonesty." Commissioner v. Strandskov, supra; See also Commissioner v. Feliz, OAL Dkt. No. BKI 85-05, Initial Decision (12/16/05), Final Decision and Order on Remand (03/13/06) (license revocation, restitution and fines for failure to remit payment to the insurer or return premiums to insureds); Shipitofsky v. Commissioner, 95 N.J.A.R.2d. (INS) 67; 1994 N.J. AGEN LEXIS 505 (license revocation and fines for withholding premiums and misappropriation of funds); Commissioner v. Erwin, OAL Dkt. No. BKI 4573-06, Initial Decision, (07/09/07), Final Decision and Order (09/17/07) (license revocation and administrative fines for, among other things, failure to remit premiums and failure to maintain a trust account). The typical mitigating factors of restitution, inexperience, lack of prior negative history, motivations and pressures of the misconduct and the possibility of reform cannot form a basis to support a sanction other than revocation in cases involving the misappropriation of client funds. Commissioner v. Ladas, supra.

I agree with the ALJ's finding that the actions taken by Charles are clear and demand the revocation of her license. As the aforementioned decisions show, revocation is appropriate in almost all cases wherein a licensed insurance producer has engaged in theft of insurance premiums. The fact that Charles made restitution of the funds taken from her employer/agency and that the criminal charges were ultimately dismissed does not have any bearing on the decision to revoke her license. Theft of insurance premiums is one of the most egregious violations an insurance producer can commit. It runs counter to all of the fiduciary obligations of the profession and repayment of the stolen funds does not obviate these actions. I have a duty to protect all New Jersey insurance consumers from unscrupulous producers that engage in such conduct. Accordingly, based upon my review of the record and the ALJ's Initial Decision, I am compelled to agree with the ALJ's determination that the revocation of Charles' insurance producer license is necessary and appropriate.

Under Kimmelman v. Henkles & McCoy, Inc., 108 N.J. 123, 137-139 (1987), 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 faith 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 137-39.

The record herein indicates the following with respect to these factors. I agree with the ALJ's finding that Charles acted in bad faith. Charles was a licensed insurance producer and demonstrated bad faith by misappropriating funds from her employer and her insurance

consumers on ten separate occasions over a period of twenty-nine months. Charles had many occasions to admit to her acts, but did not do so until the filing of criminal charges against her, at which time Charles agreed to pay the misappropriated funds back to her employer. In addition, Charles failed to notify the Department of the filing of the criminal charges against her and further ignored the Department's request for information. I agree with the ALJ that these factors weigh heavily against Charles as she failed to live up to the high standards required of an insurance producer.

Charles has also failed to provide sufficient information to determine whether she lacks the ability to pay the civil penalty. Charles clearly profited from her illegal actions as she took and placed in her own pocket \$4,045.50 from her employer. As a result of Charles' conduct, her employer and the insurance buying public at large suffered injury since the cost of insurance fraud, including the losses and costs of investigation incurred by insurers, are passed onto policyholders. In addition, Charles' breach of her fiduciary duties greatly undermines the public's confidence in the industry. As the ALJ noted, this factor weighs against Charles.

Charles' illegal conduct lasted for a period of over two years. I agree with the ALJ's determination that such a long period of time shows a pattern of illegal behavior and accordingly, this factor weighs heavily against Charles. On the issue of whether related penalties might be duplicative, Charles was charged criminally, but the charges were dropped when she made restitution of the misappropriated funds. Furthermore, even if criminal penalties had been imposed, this Kimmelman factor would require an analysis of whether the penalties are not only duplicative, but unduly punitive. The ALJ's determination that this factor weighs in favor of a large civil penalty against Charles is correct. The Supreme Court held in Kimmelman that a lack of criminal punishment weighs in favor of a more significant civil penalty because the defendant

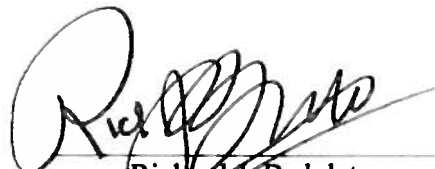
cannot argue that he/she has already paid a price for his/her unlawful conduct. Kimmelman, supra, 108 N.J. at 139. Lastly, there is no evidence that Charles has been charged with any prior violations of the Producer Act that would weigh in favor of a higher civil penalty.

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 \$15,000 fine recommended by the ALJ is fully warranted, not excessive or unduly punitive, and succeeds to the required level of opprobrium.

CONCLUSION

Having carefully reviewed the Initial Decision, the Exceptions and the entire record herein, I hereby ADOPT the Findings and Conclusions as set forth in the Initial Decision. Specifically, I ADOPT the conclusions that Charles has failed to present any legally or factually viable defense to the violations of the Producer Act as charged in the OTSC and that the Department's motion for summary decision should be granted on all three of the counts charged in the OTSC. I hereby supplement the Initial Decision to specifically find that Charles violated N.J.S.A. 17:22A-40a(2), (4), (8), (16) and (18) as charged in Counts One and Two of the OTSC. I ADOPT the conclusion in the Initial Decision that Charles' conduct as alleged in Count Three of the OTSC constitutes a violation of N.J.A.C. 11:17A-4.8. I further MODIFY the Initial Decision to consistently have it reflect that revocation, not suspension, of Charles' insurance producer license is the appropriate sanction. I also ADOPT the ALJ's recommendations that Charles be ORDERED to pay fines totaling \$15,000 and to reimburse the Department \$212.50 for its investigation costs pursuant to the Producer Act.

IT IS ORDERED on this 28th day of August, 2015.



Richard J. Badolato
Acting Commissioner

WM Charles final2015/INOORD