ORDER NO.: E17-80

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DOCKET NO.: BKI-00181-17
AGENCY DOCKET NO.: OTSC #E16-115

RICHARD J. BADOLATO, COMMISSIONER, NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE,	)	
Petitioner,	)	FINAL DECISION AND ORDER OF PRODUCER LICENSE SUSPENSION PENDING THE COMPLETION OF ADMINISTRATIVE PROCEEDINGS UNDER OAL DKT. NO. BKI 17272-15
v.	)	
WAYNE M. CITRON,	)	
Respondent.	)	

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, the New Jersey Producer Licensing Act of 2001 ("Producer Act"), and all powers expressed or implied therein, for the purposes of reviewing the June 1, 2017 Initial Decision ("Initial Decision") of Acting Director and Chief Administrative Law Judge Laura Sanders ("ALJ") upholding the Department of Banking and Insurance's ("Department") Order No. E16-115 ("Order No. E16-115") that immediately suspended Respondent Wayne M. Citron's ("Respondent") insurance producer license pending the completion of the administrative proceedings underlying Order to Show Cause No. E15-104 ("OTSC E15-104"), pursuant to N.J.S.A. 17:22A-45d.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On or about September 10, 2015, the Department issued OTSC E15-104 against the Respondent seeking to revoke the Respondent's producer license and impose civil monetary penalties and costs of investigation for alleged violations of the Producer Act, the New Jersey Public Adjusters' Licensing Act ("Public Adjusters' Act"), N.J.S.A. 17:22B-1 et seq., and the New Jersey Insurance Fraud Prevention Act ("Fraud Act"). Specifically, OTSC E15-104 contains eight Counts,[1] wherein the Department alleges that the Respondent engaged in the following activities in violation of the insurance laws of this State:

> Count One – The Respondent's New York insurance producer license was revoked on or about May 14, 1993, in violation of N.J.S.A. 17:22A-40a(2) and (9);
>
> Count Two – The Respondent failed to notify the Department within 30 days of the revocation of his New York insurance producer license, in violation of N.J.S.A. 17:22A-40a(2), (8), and (18), and N.J.S.A. 17:22A-47a;
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> Count Three – The Respondent acted as a public adjuster, as defined in N.J.S.A. 17:22B-2, without being licensed to do so, by acting or aiding on behalf R.R. and C.R. in negotiating for, or effecting the settlement of claims for loss or damages caused by, or resulting from any incident covered under a property insurance policy, in exchange for money, in violation of N.J.S.A. 17:22A-40a(2) and (8) and N.J.S.A. 17:22B-3a;

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[1] In the Initial Decision, the ALJ stated that OTSC E15-104 "was based upon three charges—acting as a licensed public adjuster without a license to do so, failure to notify the Department . . . within thirty days of the revocation of a New York insurance producer license, and making a fraudulent statement to an insurance company." Initial Decision at 3. Moreover, the ALJ noted that during the hearing on the present matter, the parties agreed that those charges related to "acting as a public adjuster without a license [contained in Count Three], and failing to notify the Department about [the] revocation of a New York license [contained in Count Two] were withdrawn." Ibid. Although the ALJ further stated that the "sole remaining charge is whether [the R]espondent made a fraudulent statement to an insurance company," the ALJ failed to address that there remains additional Counts in OTSC E15-104 that were not withdrawn. Ibid. Specifically, and in addition to the allegation that the Respondent made a fraudulent statement to an insurance company (Count Four), the following additional charges remain: the failure to disclose a license revocation in New York to the Louisiana Department of Insurance (Count Five), the failure to notify the Department of disciplinary action taken by the Louisiana Department of Insurance (Count Six), the failure to notify the Department about the Respondent's indictment for insurance fraud (Count Seven), and the material misstatement on the Respondent's application for licensure to the Department (Count Eight). It is unclear from the Initial Decision and the Exceptions filed in this matter whether the charge contained Count One, which deals with the revocation of the Respondent's New York insurance producer license, was withdrawn.

Count Four – The Respondent made a written or oral statement as part of or in support of a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contained false or misleading information concerning any fact or thing material to the claim when he falsely stated to New Jersey Manufacturers Insurance Co. ("NJM") that R.R. and C.R. had suffered food spoilage damages resulting from "lack of power . . . due to the wind blowing down the pole and wires," in violation of N.J.S.A. 17:33A-4a(1);

Count Five – The Respondent intentionally withheld material information or made a material misstatement in an application for a license by failing to disclose the revocation of his New York insurance license on his Louisiana insurance agent license application, in violation of N.J.S.A. 17:22A-40a(2), (8), and (15);

Count Six – The Respondent failed to notify the Department within 30 days of the issuance of the Notice and disciplinary action by the Louisiana Department of Insurance, in violation of N.J.S.A. 17:22A-40a(2), (8), and (19), and N.J.S.A. 17:22A-47a;

Count Seven – The Respondent failed to notify the Department within 30 days of his indictment for Insurance Fraud and Attempted Theft by Deception, in violation of N.J.S.A. 17:22A-40a(2), (8), and (18); and

Count Eight – The Respondent intentionally withheld material information or made a material misstatement in an application for a license when he falsely stated that he had not been charged with committing a felony on his insurance producer renewal application, in violation of N.J.S.A. 17:22A-40a(2), (8), and (15).

On or about October 12, 2015, the Respondent filed an Answer, wherein he admitted and denied the allegations set forth in OTSC E15-104 and requested a hearing. The Department transmitted the matter as a contested case to the Office of Administrative Law ("OAL") on October 27, 2015, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and it was docketed as BKI 17272-15. This administrative hearing on the substantive charges of OTSC E15-104 is currently pending in the OAL.[2]

[2] The ALJ noted in the Initial Decision that "[d]iscovery and ongoing discussions between the parties had delayed the scheduling of a hearing date." Initial Decision at 2.

On August 1, 2016, the Department issued Order to Show Cause No. E16-68 ("OTSC E16-68") charging the Respondent with various violations of the insurance laws and regulations of this State, including failing to obtain the written consent of the Commissioner to engage in the business of insurance after being convicted of a felony involving dishonesty or breach of trust, in violation of N.J.A.C. 11:17E-1.3. Pursuant to N.J.S.A. 17:22A-45d, OTSC E16-68 sought to immediately suspend the Respondent's insurance producer license pending the completion of the administrative proceedings based upon OTSC E15-104. By letter dated August 22, 2016, the Respondent filed his Opposition to OTSC E16-68 and on August 29, 2016, the Department filed its Reply to the Respondent's Opposition. On November 28, 2016, the Department issued Order No. E16-115 immediately suspending the Respondent's insurance producer license pending the completion of the administrative proceedings on OTSC E15-104, pursuant to N.J.S.A. 17:22A-45d.

On December 19, 2016,[3] the Respondent filed a "Notice of Motion to Vacate Order No. E16-115 dated November 28, 2016 Suspending the Insurance Producer License of Wayne Citron and Demand for Preliminary Hearing" ("Motion to Vacate") with the Department. Pursuant to N.J.S.A. 17:22A-45d, the Respondent requested that a hearing be scheduled on his Motion to Vacate within 20 days of date that Order No. E16-115 was entered or November 28, 2016. On or about January 3, 2017, the Department transmitted the matter to the OAL for a hearing, where it was filed on January 4, 2017 and docketed as BKI 00181-17. The hearing regarding the Respondent's Motion to Vacate occurred on April 17, 2017, at which the Respondent was the only witness to testify, and the record was left open until May 5, 2017, for closing arguments. Initial Decision at 2. The record was initially closed on May 8, 2017; however, the Respondent

[3] The ALJ noted in the Initial Decision that the Respondent moved to vacate Order No. E16-115 on December 28, 2016. However, the Respondent's Notice of Motion was dated December 14, 2016, and was received by the Department on December 19, 2016.

forwarded a letter confirming completion of his probation to the OAL on May 10, 2017. Ibid. The record was then reopened to admit this letter, and the record was then officially reclosed on May 12, 2017. Ibid.

The sole issues addressed and decided in the Initial Decision were whether the Respondent's license should be suspended pending the final administrative adjudication of OTSC E15-104 and as such, whether Order No. E16-115 should be vacated. On June 1, 2017, the ALJ issued the Initial Decision, which upheld Order No. E16-115 and continued the suspension of the Respondent's insurance producer license pending completion of the administrative proceedings on OTSC E15-104.

On June 21, 2017, the Respondent filed a Motion for Leave to Appeal the Initial Decision to the Superior Court of New Jersey, Appellate Division ("Appellate Division"), Docket No. AM-000659-16T4, Motion No. M-007673-16. On June 30, 2017, the Department opposed the motion, and on July 17, 2017, the Appellate Division denied both the Respondent's Motion for Leave to Appeal and the Respondent's Motion for Oral Argument on Motion.

ALJ'S FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS

(1) ALJ's Findings of Fact

(a) Respondent's Conviction for Third Degree Insurance Fraud

The ALJ found the Respondent's guilty plea on one-count of third degree insurance fraud and the substance of the guilty plea as fact. In support of this finding, the ALJ noted that on January 4, 2016, the Respondent pleaded guilty to one count of third-degree insurance fraud and was sentenced to a probation term of two years and ordered to pay a fine in the amount of $2,500. Initial Decision at 3-4. During the Superior Court proceedings related to the insurance fraud charge, the Respondent stated that sometime between December 21, 2012, and February 25, 2013, he had discussions with representatives from NJM that related to an insurance claim

for damage to a residence located at 67 Linda Road Manahawkin, New Jersey ("Manahawkin property"). Id. at 3. Specifically, the discussions involved a food spoilage claim, which had a maximum coverage of $500. Ibid. During the discussions related to this claim, the Respondent made "at least one false statement," which was that "a telephone pole supplying power to the [Manahawkin] property . . . had been knocked down during Hurricane Sandy." Ibid. The Respondent further wrote a letter to NJM, which was dated December 21, 2012, that stated:

> Pursuant to our conversation, the lack of power caused the food spoilage. The lack of power was due to the wind blowing down the pole and wires. The wind is an insured peril and therefore the insured has coverage for the food spoilage.
>
> The food spoilage items for a family of six totals $2,800.
>
> In order to resolve this outstanding item I would appreciate a confirmation of payment payable to the insured.

Id. at 4. At the time of his guilty plea, the Respondent admitted that he knew his statements regarding the falling pole were false at the time he made them. Ibid. The Respondent additionally admitted that the "statement was material, that is, [NJM] was relying on that statement in processing that claim for that insurance claim." Ibid.

At the OAL hearing on this matter, the Respondent testified that the re-inspection report of the Manahawkin property, which was completed by an adjuster for NJM, provided that "[w]e observed a pole across the street that appeared to be new but this was an off-premise power outage, and we see no coverage in the homeowner's policy for this damage." Id. at 5. The Respondent further testified that he had no personal or direct knowledge of what happened to the electricity that caused the food spoilage; however, he maintained that he "made a reasonable assumption based on overall news reports of power outages and reconstructed overhead service all along the Jersey shore, media reports about Manahawkin itself, and the fact that the pole appeared to be new." Ibid. Additionally, the Respondent testified that he was remorseful for

making the erroneous statements to NJM regarding the Manahawkin property. Id. at 4. The Respondent stated that his age, his health, and the possibility of jail time on a second-degree charge when he had a new grandson swayed his decision to not go to trial on the charges issued against him. Id. at 5.

(b) Linkage Between the Respondent's Statements to NJM and the Cancellation of the Homeowner's Insurance Policy

The ALJ noted that while the Department contends that on April 1, 2014, NJM cancelled the dwelling policy associated with the property, the cancellation letter states that NJM cancelled a policy, but the policy number is blacked out. Id. at 4. Moreover, the ALJ noted that the letter was addressed to an address in Englishtown, New Jersey, rather than the address of the Manahawkin property at issue. Ibid. The ALJ found that the letter states cancellation was due to the fact that an investigation occurred regarding the October 29, 2012 policy claim, but does not specifically state whether the claim was in relation to the Manahawkin property or the Englishtown, New Jersey property to which the letter was sent.[4] Ibid. At the OAL hearing in this matter, the Respondent testified that he had never seen the April 1, 2014 cancellation letter, referenced above, and that it could have been regarding the Manalapan property.[5] Ibid. The Respondent further testified that the Manahawkin property was insured with a dwelling policy from NJM, and that he could not recall any other claims filed for the Manahawkin property except for the food spoilage claim. Ibid. Based upon the above, the ALJ found that the linkage between the Respondent's statements to NJM and the policy that NJM cancelled "is not

[4] Pursuant to a review of the transcript of the OAL hearing in this matter, it appears that the two properties, located in Manahawkin, New Jersey and Englishtown, New Jersey appear to be owned by the same persons, who were the Respondent's clients at that time.

[5] The Respondent testified at the OAL hearing in this matter that the April 1, 2014 cancellation "letter is addressed to [the consumer] for his address at . . . Lancelot Road, Englishtown, New Jersey which is his Manalapan home." T115:10-12. For consistency throughout this Final Decision and Order, this address will be referred to as residing in "Englishtown/Manalapan."

sufficient to make a finding of fact that he harmed the homeowners who received the cancellation." Id. at 6. Specifically, the ALJ stated that it is not clear what house, policy, or statements were involved. Ibid.

(c) The Respondent's Pro Bono Work

The ALJ found as fact that the "[R]espondent donated many hours of free time to helping people determine what insurance coverage they had, what they needed to file, and how best to follow up on their claims." Ibid. Moreover, the ALJ found "that the [Respondent's] guilty plea constitutes one blemish in a thirty-four-year career in New Jersey alone." Ibid. In support of these findings, the ALJ noted that the Respondent provided numerous written testimonials in support of his advocacy for homeowners whom were victimized by Hurricane Sandy.[6] Id. at 5. The ALJ further noted that one of these testimonials, from Sue Marticek, executive director of the Ocean County Long Term Recovery Group ("Recovery Group"), provides that the Respondent participated in a dozen public information workshops hosted by the Recovery Group, conducted 82 individual assistance sessions, and continued to follow-up with homeowners as they filed policy claims. Id. at 6. The Respondent also produced an in-house magazine article about him during the early days of his career in New York while working for Prudential. Ibid.

The ALJ further provided that the Respondent's testimony during the OAL hearing explained the complicated process of trying to file insurance claims as a result of Hurricane Sandy as individual policies addressed specific parts of Hurricane Sandy-related damages. Id. at 5. The Respondent testified that citizens could not manage the complexity of the claims processes, including the required paperwork needed to file for claims. Ibid. The Respondent

[6] The ALJ noted that the testimonials provided by the Respondent are hearsay; however, the ALJ further noted that hearsay is admissible in the OAL. The ALJ stated that while the testimonials "cannot form a basis for a finding of fact, [they] can be used to buttress other, competent evidence." Initial Decision at 6 (citing Weston v. State, 60 N.J. 36 (1972)).

further noted that additional problems occurred when adjusters with no experience under-reported damages for consumers. Ibid. Specifically, the Respondent stated that building materials are more expensive in New Jersey than other parts of the country, and because of this many materials were undervalued during the claims process. Ibid. He further testified that New Jersey has a higher minimum wage than the federal standard, and New Jersey homeowners whose claims were adjusted by people from other states were subject to being paid approximately $1 less an hour than they should have received. Id. at 6. Moreover, the Respondent testified that sales tax was frequently left out of claims. Ibid.

However, the ALJ noted that the Respondent believes that his pro bono advocacy for insureds after Hurricane Sandy made him a target for insurance companies. Id. at 5. In particular, the Respondent pointed to an alleged dispute with a NJM representative that turned personal. Ibid. Moreover, the Respondent testified that he felt that the Attorney General's Office's refusal to consider allowing the Respondent to be admitted into the Pre-Trial Intervention Program was unduly harsh, considering that the food spoilage claim was only one transaction out of a 34 year career in the insurance industry. Ibid.

(2) ALJ's Analysis and Conclusions

The ALJ noted that the OAL hearing in this immediate suspension matter does not determine the outcome of the earlier filed revocation matter. Id. at 7. Specifically, the ALJ stated that the current hearing in this matter "should be an initial check against mistaken decisions. If . . . there are reasonable grounds to believe that the charges against the licensee are true" and lifting the suspension until completion of the hearing "will be harmful to the public interest, the suspension shall be continued." Ibid. (quoting New Jersey Department of Insurance v. Sarris Financial Group, 96 N.J.A.R.2d (INS) 77 (1996)). The ALJ provided that the Respondent raised the following five arguments as to why the immediate suspension of his

insurance producer license should be lifted: (a) the Commissioner cannot subject the Respondent to an immediate suspension because the statutory authority to do so is limited to federal crimes; (b) even if the Commissioner has the authority to do so, the Respondent's due process rights were violated because he did not receive a hearing within the statutory 20 days; (c) the Respondent's failure to file a waiver form cannot form a basis for a suspension because no waiver form could be located on the Department's website; (d) the Department has shown no harm to the public; and (e) the Respondent contends that he was treated unfairly by the criminal division of the Attorney General's Office due to its refusal to consider the Respondent's entry into the Pre-Trial Intervention Program, which the Respondent claims would have avoided the criminal conviction which triggered the immediate suspension action. Id. at 7. Each of the Respondent's arguments were addressed by the ALJ in separate headings, as set forth below.

(a) Authority to Impose the Waiver Requirement

The ALJ noted that N.J.A.C. 11:17D-1.1, "Purpose and Scope," sets forth the waiver requirement for those licensees convicted of a felony involving dishonesty or breach of trust. Specifically, the ALJ noted that N.J.A.C. 11:17D-1.1 provides that

> (a) The purpose of this chapter is to implement 18 U.S.C. § 1033, a federal statute which provides that no person having been convicted of a felony involving dishonesty or breach of trust or an offense under 18 U.S.C. § 1033 shall engage in the business of insurance without having first obtained the written consent of the Commissioner or his or her designee.

Initial Decision at 7. The ALJ further stated that 18 U.S.C. § 1033, in relevant part, provides that:

> (e)(1)(A) Any individual who has been convicted of any criminal felony involving dishonesty or breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.

. . .

> (e)(2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.

Initial Decision at 8-9.

The Respondent argues that 18 U.S.C. § 1033 is a federal criminal statute enacted by Congress under the Commerce Clause and is limited by its terms to persons "engaged in the business of insurance whose activities affect interstate commerce." Id. at 8 (citing 18 U.S.C. § 1033(a)(1), (b)(1), (c)(1), (d), and (e)(1)(A)). The ALJ stated that the Respondent essentially argues that the single $500[7] New Jersey food spoilage claim made to NJM, a New Jersey headquartered insurance company, has no effect on interstate commerce and thus, his conviction related to same does not fall within the provisions of 18 U.S.C. § 1033. Id. at 9. The ALJ noted that not only does NJM conduct business in Pennsylvania as well as New Jersey, but that the Respondent's argument is akin to arguing that backyard-grown medical marijuana could not be subject to the federal Controlled Substance Act. The ALJ noted that in such a case the United States Supreme Court held that six plants that were confiscated from a medical grower were part of an overall national market for marijuana. Id. at 9 (citing Gonzales v. Raich, 545 U.S. 1 (2005)). The ALJ stated that similarly, wheat grown in Ohio was deemed part of a national wheat market, even if the farmer was consuming some, using some as seed, and feeding some to his livestock. Id. at 9 (citing Wickard v. Filburn, 317 U.S. 111 (1942)). Moreover, the ALJ stated that it has been long recognized that the business of insurance "can and does affect interstate commerce." Id. at 9 (quoting U.S. v. Turner, 537 U.S. 1077 (2002)). The ALJ further

[7] While the ALJ noted that Respondent's conviction related to a $500 food spoilage claim, the December 21, 2012, letter from the Respondent to NJM, which is set forth in the Initial Decision, states "[t]he food spoilage items for a family of six totals $2,800." Initial Decision at 4.

provided that Congress delegated the right to regulate insurance under the McCarran-Ferguson Act, 15 U.S.C.A. § 1011. Id. at 9. As such, the ALJ concluded that the Commissioner does have the authority to invoke the waiver requirement in this case. Ibid.

The ALJ did note, however, that the frequency of using the immediate suspension is not known, and there appears to be no Appellate Division cases imposing the waiver requirement on a person convicted solely under New Jersey law. Ibid. Additionally, the ALJ noted that in an unpublished case, which involved a waiver filed by a licensee after the licensee's guilty plea to one count of mail fraud in violation of 18 U.S.C.A § 1033,[8] the Appellate Division affirmed that 18 U.S.C. § 1033 only allows persons convicted under it to be employed in the insurance business if the person "has the written consent of any insurance regulatory official authorized to regulate the insurer. . . ." Id. at 9-10 (quoting In re Culnan, A-1917-04T5, http://njlaw.rutgers.edu/collections/courts/ (App. Div. March 29, 2006)).

The ALJ further provided that while there are other waiver cases that have final decisions and orders issued, all of these final decisions and orders address licensees convicted of federal crimes. Id. at 10 (citing Commissioner v. Jordan, OAL Dkt. No. BKI 12577-07, Initial Decision (09/17/08), Final Decision and Order (12/03/08); Commissioner v. Baum, OAL Dkt. No. BKI 02203-09, Initial Decision (02/19/10), Final Decision and Order (04/01/10); and Commissioner v. Purcel, OAL Dkt. No. BKI 10541-11, Initial Decision (12/18/13), Final Decision and Order (08/09/11).[9] Consequently, the ALJ stated that "although the Department has routinely filed actions to suspend and revoke licenses for producers who have committed insurance-related

[8] The Initial Decision provides that the mail fraud violation in this unpublished case was in violation of "18 U.S.C.A. § 1033." This appears to be a typographical error as the correct statutory citation for the mail fraud violation contained in the Appellate Division's Order is 18 U.S.C. § 1341. Further, the statutory citation related to the waiver filed by the licensee in that matter is 18 U.S.C. § 1033.

[9] The ALJ noted that there was another case involving the waiver requirement; however, the full citation is not contained in the Initial Decision. The ALJ notes that the case is "In re Scott, OAL Dkt. No. BKI 02337-10, Final Decision (August 9 2011), http://njlaw.rutgers.edu/collections/oal/."

crimes, there appears to be no cases directly challenging the Department's authority to utilize the waiver process following a conviction for a purely state charge." Id. at 10.

(b) Delay as Due Process Violation

The ALJ stated that the Respondent's second argument is that the Department's late response to the Respondent's request for a fair hearing on Order No. E16-115 created a due process violation under the State and Federal constitutions and because of same, the Respondent's license must be restored. Ibid. The ALJ noted that N.J.S.A. 17:22A-45d gives the Commissioner the authority in any formal proceeding to enter "an appropriate order to be effective pending completion of the hearing and entry of final order," if he or she "finds that the interests of the public require that immediate action be taken prior to completion of the hearing, the making of a determination and the entry of a final order. . . ." Ibid. Further, the ALJ stated that these orders may be entered upon ex parte proofs if the proofs indicate that the Commissioner's withholding of any action until completion of a full hearing will be harmful to the public interest. Id. at 10-11. The orders that are issued pursuant to N.J.S.A. 17:22A-45d "shall be subject to an application to vacate upon 10 days' notice, and a preliminary hearing on the ex parte order shall be held in any event within 20 days after it is entered." Id. at 11.

The Respondent pointed out that Order No. E16-115, which immediately suspended the Respondent's insurance producer license, was issued on November 28, 2016 and the Department filed the matter as a contested case to the OAL on January 4, 2017. Ibid. Thus, the Respondent argued that if 20 days, according to N.J.S.A. 17:22A-45d, means calendar days, the hearing should have been held no later than December 19, 2016, and if holidays and weekends were excluded, then the hearing should have been heard by December 27, 2016. Ibid.

The Department argued that the delay in the hearing of this case is irrelevant because upon the Respondent's guilty plea, the Respondent was unable to engage in the business of

insurance in New Jersey without the Commissioner's approval of a waiver. Ibid. Additionally, the Department notes that prior to issuing Order No. E16-115, the Department did engage in due process and allowed the Respondent to file certifications, briefs, and other evidence in opposition to the issuance of the aforementioned motion. Ibid. The ALJ stated that the Respondent, by letter dated August 22, 2016, filed his Opposition to OTSC E16-68, and the Department filed its Reply on August 29, 2016. Ibid.

The ALJ noted that while due process is required before a license suspension can be imposed, because it involves a property right, "the procedural protections that must be afforded by due process vary in relation to particular circumstances of each case," and the exact boundaries of due process cannot be defined because they vary according to factual circumstances. Ibid. (citing Boddie v. Connecticut, 401 U.S. 371 (1971)). Moreover, in determining how long of a delay is justified in affording a post-suspension hearing and decision, the ALJ noted that "it is appropriate to examine the importance of the private interest and the harm to this interest occasioned by the delay; the justification offered by the agency for the delay and its relation to the underlying state interest; and the likelihood that the interim decision may have been mistaken." Id. at 11.[10] The ALJ noted that in relation to a statutory requirement that an employer hold a hearing within 30 days of providing notice of employment termination to an employee, the Appellate Division determined that the failure to do so did not cause the dismissal

[10] The ALJ cited to several United States Supreme Court decisions that address whether a due process violation occurred in administrative proceedings. Specifically, the ALJ cited to the following decisions: Fed. Deposit Ins. Corp. v. Mallen, 486 U.S. 230, 241-42 (1988) (holding that a 90-day delay for post-suspension determination involving a bank official is not a violation of due process where a hearing must be held within 30 days of the official's suspension and a decision must be issued within 60 days after the hearing); Barry v. Barchi, 443 U.S. 55, 64-66 (1979) (a horse trainer was suspended for 15 days and a post-suspension hearing that occurred after the completion of a temporary suspension does not fulfill the requirements of due process); Mathews v. Eldridge, 424 U.S. 319, 334-35 (1976) (respondent had not been denied procedural due process when he was not granted an evidentiary hearing prior to termination of his Social Security disability benefit payments); and Cleveland Bd. Of Educ. V. Loudermill, 470 U.S. 532, 546-47 (1985) (nine-month delay in final decision not "unconstitutionally lengthy per se."). Initial Decision at 11-12.

of the termination action, because "New Jersey's legislature had not included language making the [30] days a jurisdictional requirement." Id. at 12 (citing Goodman v. Dep't of Corr., 367 N.J. Super. 591 (2004)). The ALJ provided that similarly, the legislative context of N.J.S.A. 17:22A-45d does not suggest that a jurisdictional requirement be imposed. Id. at 12.

The ALJ noted that the delay in the OAL hearing in this matter did not prejudice the Respondent's ability to assemble his case for the hearing and "is not so egregious that it should strip the authority from the Commissioner to protect the public interest." Ibid. Further, as the Department provided the Respondent with an opportunity to be heard prior to the issuance of Order No. E16-115, the ALJ concluded "that [the] Department acted within a reasonable time, and therefore, did not violate [the R]espondent's due process right to a fair hearing." Ibid.

(c) Lack of a Waiver Form

The ALJ discussed that N.J.A.C. 11:17E-1.4 requires that a licensee complete and file "an application for waiver using the Initial Application (Short Form) set forth as Exhibit A in the Appendix to this chapter and available on the Department website at http:www.state.nj.us/dobi/inslic.htm." Ibid. Moreover, N.J.A.C. 11:17D-1.4 provides that persons, who are in possession of a license to engage in the business of insurance, are required to file the comprehensive form "set forth as Exhibit B in the Appendix to this subchapter and available on the Department's website at http:www.state.nj.us/dobit/inslic.htm." Id. at 12-13. The ALJ noted that the Respondent correctly pointed out in his testimony at the OAL hearing in this matter that there was no form available on the Department's website. Id. at 13.

While the ALJ noted that the Department did not contend that the forms are on the Department's website, the forms are in the regulation itself, and the Department argues that all licensees of the Department are subject to all relevant statutes and regulations. Ibid. The ALJ

concluded that the form not being on the Department's website, alone, does not relieve the Respondent of his obligation to seek the waiver. Ibid.

(d) Harm to the Public

As previously noted by the ALJ, N.J.S.A. 17:22A-45d gives the Commissioner the authority in any formal proceeding to enter "an appropriate order to be effective pending completion of the hearing and entry of a final order" on a finding that "the interests of the public require that immediate action be taken prior to completion of the hearing, the making of a determination and the entry of a final order." Ibid. The ALJ noted that in Sarris, supra, the Commissioner cited to the language of N.J.S.A. 17:22A-2d[11] in order to support a determination that an immediate suspension is warranted "if the proofs indicate that the Commissioner's withholding of any action until completion of a full hearing will be harmful to the public interest." Ibid.

The ALJ stated that the Respondent relies upon Sarris, supra, as precedent for considering a licensee's positive actions when evaluating whether the interests of the public would be better served by allowing the licensee to keep his or her license in effect pending the outcome of the underlying administrative proceeding. Ibid. The ALJ noted that in Sarris, a financial group was accused of improprieties involving Multiple Employer Welfare Benefits Trusts, Multiple Employer Voluntary Employees' Beneficiary Association plans, and "Warren Plans." Ibid. The ALJ further noted that at the time of the Commissioner's Final Decision and Order on May 17, 1996, the complaints that the Department was still investigating stemmed from events occurring between 1991 through 1993. Ibid. The ALJ stated that the Commissioner found that there "were reasonable grounds to believe the charges are true, and that respondents

[11] The ALJ noted that N.J.S.A. 17:22A-2d was repealed by P.L. 2001, c. 210 § 27, eff. Aug. 15, 2001; however, the language set forth in N.J.S.A. 17:22A-45d is identical to that of N.J.S.A. 17:22A-2d.

have engaged in deceptive and misleading practices in that they misrepresented life insurance as a pension, retirement and/or investment plan." Id. at 14. However, the ALJ noted that respondents in Sarris provided enough evidence to show that they had not sold those plans since 1993. Ibid. Further, the ALJ stated that the Commissioner found that it was appropriate to use "less onerous or intrusive restrictions . . . to protect the public interest," as an alternative to suspension, and instead directed that the licensees continue to refrain from marketing the three plans and "pension plan products" and required them to provide the Department with copies of their advertising to New Jersey residents. Ibid.

The ALJ notes that the Respondent believes that his beneficial actions during his career far outweigh his one bad act, the Respondent notes that he is remorseful that he made a false statement, and the Respondent alleges that there is no evidence of harm to the public in reinstating his license pending the outcome of the administrative proceedings concerning the allegations set forth in OTSC E15-104. Ibid. Moreover, the ALJ provided that the letter from the Respondent's probation officer confirms that the Respondent's two-year probation term ended early on April 27, 2017, a little over a year after it began. Ibid.

The Department argued that "[i]nsurance fraud is a serious crime. When insurance licensees 'breach their duties and engage in fraudulent practices and unfair trade practices, the affected insurance consumers are financially harmed and the public's confidence in the insurance industry as a whole is eroded.'" Ibid. (quoting Commissioner v. Fonseca, OAL Dkt. No. BKI 11979-10, Initial Decision (12/28/11), Final Decision and Order (08/15/11)). While the Department offered numerous cases to support its position that the immediate suspension of the Respondent's insurance producer license was warranted, the ALJ found that one of the cases is inapposite as it involves a larger, continuing fraud in the failure to remit premiums over a two-year period, a larger amount of money, and failure to notify the Department of the conviction for

third-degree theft. Id. at 14-15 (referencing Commissioner v. Stone, OAL Dkt. No. BKI 06301-07 (06/16/08), Final Decision and Order (09/15/08)).

However, the ALJ noted that the facts presented in Commissioner v. Del Mauro, 93 N.J.A.R.2d (INS) 37, 38 (1993) are akin to those in the present matter. Id. at 15. In Del Mauro, the licensee had committed a single instance of submitting a false claim for personal property loss that was incurred in connection with the theft of his automobile, by altering receipts from various businesses. Ibid. The ALJ noted that the amounts altered were small and the action, on the part of the licensee, occurred only once. Ibid. While the licensee produced evidence to show that he had reformed, revocation was deemed appropriate because "[a] licensee as an insurance producer has a thorough knowledge on the insurance industry and is in a position of trust. Thus, a licensed insurance producer is in a better position than a member of the public to defraud an insurer. Therefore, a licensee must be held to a high standard of conduct." Ibid.

Additionally, the ALJ noted that in Commissioner v. Nicolo, OAL Dkt. No. BKI 10722-04, Initial Decision (05/31/06), Final Decision and Order (10/12/06), the public adjuster entered into a Stipulation of Settlement with the New Jersey Office of the Insurance Fraud Prosecutor, wherein he admitted that he made a false and misleading representation in support of an insurance claim when he submitted a receipt for $1,150 from a fictitious home improvement contractor, in violation of the Fraud Act. Ibid. While the Commissioner only imposed a $2,500 fine, instead of the $32,500 sought by the Department, the adjuster's license revocation was affirmed. Ibid.

In light of the above analysis, the ALJ concluded "that the Department did not show threat of immediate, direct harm to insureds posed by lifting the suspension on [the R]espondent's license." Id. at 16. Specifically, the ALJ noted that the Department did not undermine the Respondent's "credible testimony that he appreciates and takes responsibility for

his actions and regrets them." Ibid. The ALJ reasoned that it is unlikely that the Respondent will make another false statement to an insurance company during the time it takes for the administrative proceedings based upon OTSC E15-104 to be concluded. Ibid.

However, the ALJ noted that the question posed is whether the temporary suspension creates a harm to the public in a more general sense. Ibid. The ALJ stated that Fraud Act was designed to combat the State's problem with insurance fraud. Ibid. Moreover, the ALJ noted that while many individuals behaved poorly in the aftermath of Hurricane Sandy, this does not excuse the conduct of those individuals. Ibid. As such, the ALJ concluded that for the purposes of the Respondent's petition to vacate the immediate suspension of his insurance producer license, imposed by Order No. E16-115, the suspension imposed "should stay in place because the public has to be able to rely upon 'a licensee's honest[ty] trustworthiness and integrity.'" Ibid. (quoting Commissioner v. Nasir, OAL Dkt. No. BKI 02335-03, Initial Decision (05/27/05), Final Decision and Order (05/27/05), remanded, Appellate Division, A-6060-04T1 http://njlaw.rutgers.edu/collections/oal/ (App. Div. January 30, 2007).

(e) Suspension Compounds the Unfair Denial of Pre-Trial Intervention

The ALJ notes that the Respondent contends that he was treated unfairly by the Attorney General's Office as the plea agreement offered to him required that he waive his right under N.J.S.A. 2C:43-12 to apply for admission into the Pre-Trial Intervention Program. Id. at 16. However, the ALJ noted that the New Jersey Supreme Court provided that the Superior Court

> may refuse to accept a plea of guilty and shall not accept such a plea without first questioning the defendant personally, under oath or by affirmation, and determining by inquiry of the defendant and others, in the court's discretion, that there is a factual basis for the plea and that the plea is made voluntarily, not as a result of any threats or of any promises or inducements not disclosed on the record, and with an understanding of the nature of the charge and consequences of the plea.

Id. at 16-17 (quoting State v. Slater, 198 N.J. 145, 155 (2009)). As the Superior Court accepted the plea agreement in the Respondent's criminal case, the ALJ concluded that "it is not within the OAL's purview to second-guess the [Superior] Court's exercise of its discretion." Id. at 17.

(3) ALJ's Ultimate Recommendation Regarding the Temporary Suspension of the Respondent's Insurance Producer License

In light of the above discussion, the ALJ recommended that Order No. E16-115 and the Respondent's license suspension be continued until the completion of the administrative proceedings in OAL Dkt No. BKI 17272-15. Ibid.

EXCEPTIONS

By letters dated June 13, 2017, the Office of the Attorney General, on behalf of the Department, and Michael P Berkley, Esq., on behalf of the Respondent, submitted timely Exceptions to the Initial Decision. On June 16, 2017, the Office of the Attorney General, on behalf of the Department, filed its Reply to the Respondent's Exceptions.

(1) Department's June 13, 2017 Exceptions

In its Exceptions, the Department concurs with the overall conclusion of the Initial Decision that the suspension of the Respondent's insurance producer license be continued pending the conclusion of the matter in OAL Dkt. No. BKI 17272-15, as ordered by Director Hartt in Order No. E16-115. The Department requests that the Initial Decision be adopted with the following three modifications.

First, the Department notes that the ALJ states in the Initial Decision, in reference to the charges alleged in OTSC E15-104, that

> the parties agreed that the charges relating to acting as a public adjuster without a license, and failing to notify the Department about a revocation of a New York license, were withdrawn. Thus, the sole remaining charge is whether [the R]espondent made a fraudulent statement to an insurance company and the remaining

> issue whether he should be subjected to license revocation or suspension and fines as a result of such activity.

Initial Decision at 3. However, the Department contends that the remaining charges in the underlying action also include: the failure to disclose a license revocation in New York to the Louisiana Department of Insurance, the failure to notify the Department of disciplinary action taken by the Louisiana Department of Insurance, the failure to notify the Department about the Respondent's indictment for insurance fraud, and a material misstatement on the Respondent's application for licensure to the Department.

Next, while the Department agrees with the ALJ's finding that the Respondent was convicted of insurance fraud in connection with a food spoilage claim to NJM, the Department contends that the ALJ did not find that the Respondent's fraudulent statements to NJM on behalf of his clients, and for which he was convicted, caused harm to those clients. The Department notes that the ALJ stated that "[t]he linkage between [the Respondent]'s statement to NJM and the homeowners' policy that NJM cancelled is not sufficient to make a finding of fact that he harmed the homeowners who received the cancellation." Id. at 6. However, the Department contends that there is sufficient evidence in the record to support a finding that the Respondent harmed his clients. The Department further notes that the Respondent's clients lost their insurance policy as a result of the Respondent's fraudulent statements to NJM. In support of this contention, the Department provides the following relevant facts: On April 1, 2013, NJM cancelled the "dwelling" policy belonging to the Respondent's clients. Id. at 4. Moreover, the Respondent's clients had two properties, one in Manahawkin, New Jersey and another in Englishtown/Manalapan, New Jersey. Ibid. The Manahawkin property was the subject of the Respondent's false insurance claim, and NJM's Notice of Cancellation to the Respondent's clients stated, in part, that "[d]ue to the circumstances surrounding your October 29, 2012 claim,

which resulted in an SIU investigation, this policy cannot continue and will be cancelled." (Exhibit P-4, page 14, Exhibit P-6, ¶ 3). Moreover, the Department notes that the Respondent testified that: he had not previously seen the Notice of Cancellation letter; believed that the Notice of Cancellation related to his clients' "homeowners" policy for their Englishtown/Manalapan property; the Manahawkin property was also insured with a dwelling policy from NJM; and the Respondent stated that he could not recall any other claims other than the food-spoilage claim for the Manahawkin property. The Department contends that since the "dwelling" policy belonging to the Respondent's clients was cancelled because of a Hurricane Sandy-related claim that was under investigation, their "dwelling" policy was for their Manahawkin home, and the Respondent could not point to another claim for that property, the Respondent's fraudulent statements to NJM caused the cancellation of the Respondent's clients' insurance policy. Thus, the Respondent's clients were harmed by the Respondent's fraud.

Lastly, the Department notes that "the Initial Decision[, at certain points,] underestimates the seriousness of insurance fraud in the context of a licensee." The Department contends that the Respondent's conviction for insurance fraud is more than a "blemish," as found by the ALJ. The Department further notes that insurance fraud is a serious crime, especially when committed by a licensed insurance producer, because when licensees "breach their fiduciary duties and engage in fraudulent practices and unfair trade practices, the affected insurance consumers are financially harmed and the public's confidence in the insurance industry as a whole is eroded." Commissioner v. Fonseca, supra.

Moreover, the Department states that while the Initial Decision concludes that "the Department did not show threat of immediate, direct harm to insureds posed by lifting the suspension on [the R]espondent's license," the Department did show that there was direct harm

to the Respondent's clients in this matter and that the Respondent's behavior could expose other insureds to harm.

(2) Respondent's June 13, 2017 Exceptions

In his Exceptions, the Respondent contends that the facts adduced at the April 1, 2017 OAL hearing in this matter showed that there was no immediate need to protect the public from the Respondent and the decision to immediately suspend the Respondent's insurance producer license was arbitrary, capricious, and unreasonable; contrary to the findings of fact; and not supported by substantial credible evidence in the record. In support of these contentions, the Respondent filed four specific Exceptions to the Initial Decision, as summarized below.

First, the Respondent contends that the Department failed to establish that the Respondent was a threat of harm to the public interest, pursuant to N.J.S.A. 17:22A-45d. Specifically, the Respondent points to the ALJ's conclusion that "the Department did not show threat of immediate, direct harm to insureds posed by lifting the suspension on [the R]espondent's license." Id. at 16. The Respondent further points out that the ALJ noted that "the linkage between Citron's statement to NJM and the homeowner's policy that NJM cancelled is not sufficient to make a finding of fact that [the Respondent] harmed the homeowners who received the cancellation." Id. at 6. Additionally, the Respondent provides that the Department did not call any witness or offer any direct testimony at the OAL hearing, but rather relied upon the Respondent's guilty plea for third-degree insurance fraud to warrant the immediate suspension of the Respondent's insurance license even though the ALJ concluded that "the guilty plea constitutes one blemish on a thirty-four year career in New Jersey alone." Ibid. Moreover, the Respondent contends that his testimony was deemed credible by the ALJ and that he donated many hours to helping Hurricane Sandy victims. This testimony was not controverted by the Department.

The Respondent provides that regardless of the above-noted findings in the Initial Decision, the ALJ "arbitrarily and capriciously continued the order of suspension dated November 28, 2016," and the ALJ's decision "was in direct contradiction to her findings of fact [and] under N.J.S.A. 15:14B-10(c)[12] would require a reversal of the immediate suspension of [the Respondent]'s [i]nsurance [p]roducer [l]icense." Additionally, the Respondent contends that Del Mauro, supra, as addressed by the ALJ, is inapplicable to the present matter, as Del Mauro did not deal with an interim suspension pursuant to N.J.S.A. 17:22A-45d and further, the Respondent contends that the Respondent's conduct in Del Mauro was deemed egregious and his testimony was false and misleading, which was not found in the present matter. Similarly, the Respondent contends that the ALJ's use of Commissioner v. Nicolo, supra, was inappropriate as the Respondent's testimony in that matter was deemed to be "insulting, evasive, and truly more indicative of his flawed character than not." As such, the Respondent contends that "the clear discrepancy between [the ALJ's] findings of fact and ultimate decision [to] continu[e] the immediate interim suspension . . . should be reversed and [the] Respondent's [i]nsurance [p]roducer [l]icense immediately reinstated. . . ."

Next, the Respondent contends that the ALJ failed to address the Respondent's argument that his right under the United States and New Jersey Constitutions against double jeopardy was violated by the Department's application and enforcement of N.J.A.C. 11:17D-1.3, as this regulation adopted 18 U.S.C. § 1033, a federal insurance fraud statute, after the Respondent was convicted of insurance fraud under New Jersey law. The Respondent contends that he was convicted under a State law, specifically, the Fraud Act, N.J.S.A. 17:33A-1 et seq., and is now being punished under a federal criminal statute for the same crime he was already punished for

[12] The Respondent references N.J.S.A. 15:14B-10(c) to support his proposition that the immediate suspension should be reversed. Although this statutory provision does not exist, it is believed that the Respondent may have meant to reference N.J.S.A. 54:14B-10(c); however, the Respondent does not articulate how this provision mandates the reversal of the immediate suspension.

under New Jersey law. The Respondent argues that the waiver requirement, set forth in N.J.A.C. 11:17D-1.3, is derived from a federal criminal statute and it imposes "the requirements of the criminal statute as a civil penalty against someone who has already been convicted under state law." The Respondent further argues that New Jersey cannot codify a federal criminal statute, 18 U.S.C. § 1033, "into its civil statute and impose the criminal statute's penalties as a civil penalty on an individual after he/she has already been criminally convicted and punished within the same state or state crime."

Next, the Respondent contends that the ALJ improperly found that the Department's enforcement of the waiver requirement did not violate the Commerce Clause. Specifically, the Respondent contends that N.J.A.C. 11:17E-1.3 is derived from 18 U.S.C. § 1033, which the Respondent states requires that the conduct of the individual affect interstate commerce. The Respondent further argues that the legislature did not provide that the business of insurance in and of itself affects interstate commerce, and "[t]he record is devoid of any evidence proffered by the [Department] that [the Respondent]'s conduct affected interstate commerce. . . ."

The Respondent notes that the ALJ found that "although the Department has routinely filed actions to suspend and revoke licenses for producers who have committed insurance-related crimes, there appears to be no case directly challenging the Department's authority to utilize the waiver process following conviction of a purely state charge." Initial Decision at 9. However, the Respondent argues that "New Jersey cannot simply codify a federal criminal statute based specifically on the violation of the US Commerce Clause and apply it to its citizens which were convicted in New Jersey."

Lastly, the Respondent contends that the ALJ's decision to continue the immediate interim suspension of the Respondent's insurance producer license violates legislative policy. Specifically, the Respondent states that N.J.S.A. 17:22A-45d requires that a hearing be held

within 20 days for ex parte orders that immediately suspend an insurance producer's license. The Respondent contends that he was entitled to a hearing by December 19, 2016; however, the hearing did not take place until April 17, 2017. The Respondent claims that the Department failed to comply with the statute and hearing requirements. As such, the Respondent argues that he "was deprived of his livelihood for more than four months without a hearing on the matter in direct violation of his constitutional right to due process under the State and Federal Constitutions."

(3) Department's June 16, 2017 Reply to the Respondent's June 13, 2017 Exceptions

In its Reply to the Respondent's Exceptions, the Department argues that the Respondent misinterprets the standard for the Commissioner's discretion to impose an immediate suspension pursuant to N.J.S.A. 17:22A-45d. Specifically, the Department acknowledges that the Respondent argues that the Department failed to "show threat of immediate, direct harm to insureds posed by lifting the suspension." Initial Decision at 16. However, the standard for imposing an immediate suspension is whether "the proofs indicate that the Commissioner's withholding of any action until completion of a full hearing will be harmful to the public interest." N.J.S.A. 17:22A-45d. Further, the Department notes that the Commissioner may suspend the Respondent's license "if the [C]ommissioner finds that the interests of the public require that immediate action be taken prior to completion of the hearing, the making of a determination and the entry of a final order. . . ." Ibid. Thus, the Department notes that the standard is not whether a threat of immediate direct harm to insureds or immediate danger to the public exists. The Department contends that the ALJ's determination that the Respondent's suspension should stay in place "because the public has to be able to rely upon a licensee's honesty, trustworthiness and integrity" is correct. Initial Decision at 16. The Department further argues that the public interest is harmed when insurance producers who have committed

insurance fraud are allowed to continue representing insureds because it negatively impacts the public's reliance on the integrity of licensees. Moreover, the Department maintains that the ALJ's reliance on Commissioner v. Del Mauro, supra, and Commissioner v. Nicolo, supra, is appropriate in this matter because the cases provide authority for the protection of the public against licensees who have committed insurance fraud.

The Department further contends that the Respondent's second Exception, which is that the ALJ failed to properly address whether the waiver requirement violates double jeopardy, was already addressed by the Commissioner prior to the issuance of Order No. E16-115. The Department notes that the Respondent was convicted of insurance fraud, in violation of N.J.S.A. 2C:21-4.6, not under the Fraud Act, N.J.S.A. 17:33A-1 et seq., as alleged in the Respondent's Exceptions. Moreover, the Department argues that the Respondent has not been criminally punished by the Commissioner's exercise of the waiver requirements of 18 U.S.C. § 1033 and N.J.A.C. 11:17E-1 et seq.

The Department contends that it is acting pursuant to Congress's requirement that convicted felons obtain the consent of the state insurance regulator before engaging in the business of insurance, which the Department has implemented in N.J.A.C. 11:17E-1 et seq. Moreover, the Department points out that a license suspension pending the outcome of a previously initiated administrative proceeding is provided as a remedy pursuant to N.J.S.A. 17:22A-45d. The Department argues that it is not imposing any criminal penalties on the Respondent, and moreover, an administrative action to suspend or revoke a producer's license is not duplicative of criminal penalties based upon the same conduct. Thus, this administrative action does not create a double jeopardy violation, as the Double Jeopardy Clause protects against multiple "punishments" for the same illegal actions. Merin v. Maglaki, 126 U.S. 430, 442 (1992). The Department further notes that not only are double jeopardy protections not

applicable to cases involving civil penalties, but penalties that are "remedial in nature" are "outside the scope of the Double Jeopardy Clause." Id. at 441, 442. Administrative sanctions, such as license revocation or suspension, are remedial, with the purpose "to protect the public at large against unscrupulous insurance brokers and agents." Commissioner v. Stone, OAL Dkt. No. BKI 6301-07, Initial Decision (09/15/08), Final Decision and Order (09/15/08).

In regards to the Respondent's third Exception, which maintains that the ALJ improperly found that the Department's enforcement of the waiver requirement did not violate the Commerce Clause, the Department argues that the business of insurance does affect interstate commerce, and that "Congress specifically delegated to the states the right to regulate insurance." Initial Decision at 9. Moreover, the Department contends that the plain language of 18 U.S.C. § 1033 shows that the waiver requirement is not just limited to federal crimes, as the Respondent alleges. Specifically, the Department notes that the statute shows that any individual convicted of any crime involving breach of trust or dishonesty may only engage in the business of insurance if he or she receives the consent from the state insurance regulator. As the Respondent was convicted of a felony involving dishonesty or breach of trust, the Respondent was required to submit a waiver to engage in the business of insurance in this State.

Additionally, the Department states that In re Culnan, supra, cited by the ALJ in the Initial Decision, dealt with a conviction of mail fraud under 18 U.S.C. § 1341 and theft under N.J.S.A. 2C:20-9, a state crime involving dishonesty. The Department further notes that the Appellate Division did not question the Commissioner's authority to utilize the waiver for either offense. Further, the National Association of Insurance Commissioners ("NAIC") has found that 18 U.S.C. § 1033 applies to any person that "has ever been convicted of a state or federal felony crime involving dishonesty or breach of trust." Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994; United States Code §§ 1033-1034;

NAIC Antifraud Task Force 2011, p. 4, available at: http://www.naic.org/documents/prod_serv_legal_sir_op.pdf (last visited August 28, 2017).Lastly, the Department agrees with the ALJ's analysis and conclusion in the Initial Decision that there were no constitutional violations in the process to suspend the Respondent's insurance producer license.

LEGAL DISCUSSION

For reasons that follow, I concur with the ALJ that the immediate suspension of the Respondent's insurance producer license pending the outcome of the administrative proceedings in relation to OTSC E15-104 as ordered in Order No. E16-115 should continue. As noted by the ALJ, "the public has to be able to rely upon 'a licensee's honesty, trustworthiness and integrity.'" Initial Decision at 16 (quoting Commissioner v. Nasir, supra). Thus, I FIND that allowing the Respondent to maintain his insurance producer license until completion of the administrative proceedings in relation to OTSC E15-104 and after his conviction for insurance fraud would be harmful to the public interest, and as such, the Respondent's insurance producer license will continue to be suspended, pursuant to N.J.S.A. 17:22A-45d and the terms of Order No. E16-115.

(1) Waiver Requirement Pursuant to 18 U.S.C. § 1033(e) and N.J.A.C. 11:17E-1.3

Pursuant to 18 U.S.C. § 1033(e), no person having been convicted of a felony involving dishonesty or breach of trust shall be engaged in the business of insurance without first obtaining a waiver from the Commissioner. Specifically, the statute provides that:

> Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.

18 U.S.C. § 1033(e)(1)(A) (emphasis added). The Statute further provides that:

> A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.

18 U.S.C. § 1033(e)(2). Further, 18 U.S.C. § 1033(e) has been codified in New Jersey in N.J.A.C. 11:17E-1.3 and provides:

> No person having been convicted of a felony involving breach of trust or dishonesty or having been convicted under 18 U.S.C. § 1033 shall be employed in the business of insurance in this State in any capacity without having first obtained a waiver from the Commissioner or his or her designee in accordance with the provisions of 18 U.S.C. § 1033(e)(2) and this subchapter.

N.J.A.C. 11:17E-1.3(a). The regulation additionally provides that

> All prohibited persons seeking to obtain a waiver in accordance with (a) above shall complete and file "Application for Waiver Short Form" or "Application for Waiver Comprehensive Form," set forth in Exhibits A and B respectively in the Appendix to this chapter and incorporated herein by reference.

N.J.A.C. 11:17E-1.3(c).

Here, the Respondent on January 4, 2016, pleaded guilty to one count of third-degree Insurance Fraud, which stemmed from the Respondent conduct of insurance business in which he made at least one false statement to NJM in relation to a food spoilage claim for his clients. Initial Decision at 3. Specifically, the ALJ found that the Respondent's false statement to NJM was that a telephone pole that was supplying power to the Manahawkin property had been knocked down during Hurricane Sandy. Ibid. The Respondent was then, on April 19, 2016, convicted of one count of third-degree Insurance Fraud, in violation of N.J.S.A. 2C:21-4.6. See Judgment of Conviction, attached to the Department's Letter Brief in Opposition to the Respondent's Motion to Vacate, at Ex. C. The ALJ further noted that on April 1, 2014, NJM

cancelled the dwelling policy associated with the property owned by the Respondent's clients as a result of an investigation regarding the October 29, 2012 claim. Id. at 4.

Based upon the above findings of fact, there is no dispute that the Respondent's conviction for Insurance Fraud is a felony involving dishonesty or breach of trust within the definition set forth in N.J.A.C. 11:17E-1.2.[13] Moreover, a plain reading of 18 U.S.C. § 1033(e) shows that any individual, who has been convicted of any crime involving dishonesty or breach of trust at the state or federal level, may only engage in the business of insurance if he or she receives the consent of the state's insurance regulator. As such, the Respondent was required, pursuant to the terms 18 U.S.C. § 1033(e)(2) and N.J.A.C. 11:17E-1.3, to obtain a waiver from the Commissioner to participate in the business of insurance in this State. However, the Respondent has failed to obtain the required waiver. As found by the ALJ, the Respondent's argument that the waiver could not be requested because the form does not appear on the Department's website is of no import. The Respondent, as a licensed New Jersey insurance producer is subject to all relevant statutes and regulations and "the fact that the form was not online on the Department's website, does not, in and of itself relieve [the R]espondent of his obligation to seek a waiver," considering that the waiver form is contained in the appendices of the regulation. Initial Decision at 13. As the Respondent has not obtained a waiver to participate in the business of insurance in this State, he is prohibited from engaging in the business of insurance as a matter of law.

Moreover, the Respondent's argument that the Department's enforcement of the waiver requirement violates the Commerce Clause is unfounded. Specifically, the Respondent's

[13] Pursuant to N.J.A.C. 11:17E-1.2, dishonesty "means any act, omission or commission, which involves or in any way constitutes the offense of theft, larceny, robbery, wrongful appropriation, criminal conversion, tax evasion, perjury, bribery, forgery, defalcation, counterfeiting, false or misleading oral or written statements, deception, fraud, schemes or other artifices to deceive or defraud, material misrepresentation and/or the failure to disclose material facts which are part of a criminal enterprise."

argument that the Respondent's Insurance Fraud conviction for a single food spoilage claim in New Jersey does not affect interstate commerce ignores that "the business of insurance can and does affect interest commerce." U.S. v. Turner, 301 F.3d 541, 544 (7th Cir. 2002), cert. denied 537 U.S. 1077 (2002). Additionally, insurance, in general, is a channel through which interstate commerce flows. Ibid. Further, as the ALJ noted, "Congress specifically delegated to the states the right to regulate insurance." Id. at 9. As such, the Department was well within its authority to codify 18 U.S.C. § 1033 into its regulations and require that the Respondent file a waiver to engage in the business of insurance in this State subsequent to his Insurance Fraud conviction. As such, I concur with the ALJ that the Department's imposition of the waiver requirement in the present matter does not violate the Commerce Clause of the United States Constitution.

Additionally, the Respondent's argument that the Department's enforcement of the waiver requirement violates the Respondent's right under the United States and New Jersey Constitutional provisions against double jeopardy is also unsupported. While the Respondent was indeed convicted under a New Jersey criminal statute, specifically, N.J.S.A. 2C:21-4.6, for third degree Insurance Fraud, the Respondent is not now being criminally punished by the Commissioner's exercise of the waiver requirements, which are set forth in 18 U.S.C. § 1033 and N.J.A.C. 11:17E-1 et seq. The Double Jeopardy Clause only protects individuals against multiple punishments for the same offense and is not applicable to civil penalties, as those penalties are "remedial in nature." Merin, supra, 126 N.J. at 442, 441. Administrative sanctions such as license revocation or suspension do not fall under the scope of the Double Jeopardy Clause, and therefore I FIND that the Department's imposition of the waiver requirement in this matter does not violate the Respondent's right against double jeopardy.

(2) Immediate Suspension of the Respondent's Insurance Producer License under N.J.S.A. 17:22A-45d

Pursuant to N.J.S.A. 17:22A-45d, the Commissioner is authorized to suspend an insurance producer's license prior to the completion of an administrative hearing "if the proofs indicate that the Commissioner's withholding of any action until completion of a full hearing will be harmful to the public interest." Moreover, the Commissioner may suspend an insurance producer's license "if the [C]ommissioner finds that the interests of the public require that immediate action be taken prior to completion of the hearing, the making of a determination and the entry of a final order. . . ." Ibid. The order issued by the Commissioner may be entered on ex parte proofs; however, "a preliminary hearing on the ex parte order shall be held in any event within 20 days after it is entered." Ibid.

As noted by the Department in its Reply to the Respondent's Exceptions, the standard for the Commissioner's discretion to impose an immediate suspension, pursuant to N.J.S.A. 17:22A-45d, is not based upon whether there is a threat of immediate, direct harm to insureds or immediate danger to the public, as alleged by the Respondent, but rather whether withholding the suspension would be "harmful to the public interest." N.J.S.A. 17:22A-45d. A licensee's honesty, trustworthiness, and integrity are of paramount concern, since an insurance producer acts as a fiduciary to both the consumers and the 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). Additionally, a licensed producer is better placed than a member of the public to defraud an insurer. Strawbridge v. New York Life Ins. Co., 504 F.Supp. 824 (D.N.J. 1980). As such, 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.

The Commissioner has consistently held that misconduct involving bad faith, fraud and dishonestly compels license revocation. Commissioner v. Strandskov, OAL Dkt. No. BKI

03451-07, Initial Decision (09/25/08), Final Decision and Order (02/04/09). Our strong policy is to instill public confidence in both insurance professionals and the industry as a whole. See In re Parkwood Co., 98 N.J. Super. 263 (App. Div. 1963). Courts have long recognized that the insurance industry is strongly affected by the public interest and the Commissioner is charged with the duty to protect the public welfare. See Sheeran v. Nationwide Mutual Insurance Company, 80 N.J. 548, 559 (1979). 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. In re Parkwood Co., supra, at 268. As such, I FIND that the suspension of the Respondent's insurance producer license, pursuant to N.J.S.A. 17:22A-45d and Order No. E16-115, pending the completion of the administrative proceedings in relation to OTSC E15-104 should be continued in order to protect the public interest. Additionally, I note that I disagree with the ALJ's contention that the Respondent's conviction for insurance fraud is just a "blemish" on his career. As I have repeatedly held, insurance fraud is a serious and significant infraction from which the public must be protected and this is even more true when committed by a licensed insurance producer, as is the case in the present matter.

Additionally, I disagree with the ALJ's conclusion that the Department failed to "show threat of immediate, direct harm to insureds posed by lifting the suspension on the Respondent's license." Initial Decision at 16. As determined above, the standard for the Commissioner's discretion to impose the immediate suspension is based upon whether withholding such an action "will be harmful to the public interest," not whether there is an "immediate direct harm to insureds." Nevertheless, I find that the Department did, in fact, show immediate harm to the Respondent's clients. My review of the undisputed record has determined that the ALJ erred in finding that there was no linkage between the Respondent's fraudulent statements to NJM on behalf of clients and the subsequent cancellation of those same clients' policy by NJM for

fraudulent Sandy claims. The ALJ' focus on where the Notice of Cancellation was sent is misplaced because: a) the Respondent admitted the clients had two properties both insured through NJM; b) he acknowledged that he believed that this Notice of Cancellation dealt with his clients' homeowner's policy for their Englishtown/Manalapan property; c) the Notice of Cancellation expressly states that cancellation was due to a fraud investigation concerning the clients' October 29, 2012 claim; and d) the Respondent admitted that he could not recall any other claims [other] than the food-spoilage claim for the Manahawkin property. To me, it is clear upon these undisputed proofs that the Respondent's false statements to NJM regarding a false food spoilage claim caused the cancellation of insurance policy held by the Respondent's clients. As such and noting that such a finding is not necessary to sustain an immediate suspension, I MODIFY the Initial Decision and find that the Respondent's false statements to NJM directly harmed his clients and caused NJM to cancel the insurance policy maintained by the Respondent's clients.

Moreover, it should be noted that the Respondent's contention that he was denied due process as a result of the OAL hearing in this matter not being heard within 20 days of the date of Order No. E16-115, as set forth in N.J.S.A. 17:22A-45d, is unfounded. As noted above, N.J.S.A. 17:22A-45d, provides that the Commissioner's order to immediately suspend an insurance producer license "may be entered on ex parte proofs." Additionally, "a preliminary hearing on the ex parte order shall be held in any event within 20 days after it is entered." N.J.S.A. 17:22A-45d. While the Respondent correctly notes that a hearing should take place within 20 days of the date the order is entered, this requirement is only for ex parte orders, which Order No. E16-115 was not. In fact, prior to the issuance of Order No. E16-115, the Respondent was given an opportunity to respond to OTSC E16-68 and provided same in a letter dated August 22, 2016, and therefore the requirement of holding a hearing within 20 days of issuance of the

Order suspending the Respondent's license did not apply. Moreover, I note that Order No. E16-115, that imposed the immediate suspension, specifically provided the following: "Respondent may request a preliminary hearing to be held at the [OAL] within twenty (20) days of the date of this Order, on the matters contained herein and on a date selected by the [OAL]." Thus, the Department provided the Respondent with proper due process that comports with the Commissioner's powers of immediate suspension both prior to the issuance of Order No. E16-115 because the Respondent was given – and exercised – his rights to oppose issuance of the Order suspending his license before it was issued, and he was also give a full opportunity to seek review before the OAL and my office of Order No. E16-115 after its issuance in full compliance with the timeframes required by N.J.S.A. 17:22A-45d. It is also important to note that I concur with the ALJ that the OAL's delay in scheduling the hearing "did not prejudice [the Respondent]'s ability to assemble his case for hearing, and is not so egregious that it should strip the authority from the Commissioner to protect the public interest." Initial Decision at 12.

Lastly, for the reasons set forth in the Department's Exceptions and addressed above in footnote 1, I MODIFY the Initial Decision to correct the remaining charges in the underlying administrative action based upon OTSC E15-104.

CONCLUSION

Having carefully reviewed the Initial Decision and the entire record herein, I hereby ADOPT the Findings and Conclusions as set forth in the Initial Decision, except as modified herein, and hold that the immediate suspension of the Respondent's insurance producer license, pursuant to N.J.S.A. 17:22A-45d and Order No. E16-115, be continued pending the completion of the administrative proceedings based upon OTSC E15-104.

It is so ORDERED on this 29th day of August, 2017

Richard J. Badolato
Commissioner

AV Citron Immediate Suspension Final Order/Orders

ORDER TO SHOW CAUSE NO. E15-104

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of Banking and Insurance, State of New Jersey, to fine, suspend, and/or revoke the insurance producer license of Wayne M. Citron, License No. 8063623.	)))))))	ORDER TO SHOW CAUSE

TO: Wayne M. Citron
6 Carter Drive
Marlboro, NJ 07746

This matter, having been opened to the Commissioner of the New Jersey Department of Banking and Insurance ("Department") upon information that Wayne Citron, currently licensed as a resident insurance producer, pursuant to N.J.S.A. 17:22A-33, may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Citron is subject to the Insurance Producer Licensing Act, N.J.S.A. 17:22A-26, et seq. ("Producer Act"), the New Jersey Public Adjusters' Licensing Act, N.J.S.A. 17:22B-1, et seq. ("Public Adjusters' Act") and the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 et seq. ("Fraud Act"); and

WHEREAS, Citron has been a licensed insurance producer in New Jersey, pursuant to N.J.S.A. 17:22A-32, since 1983; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(1), a producer cannot provide incorrect, misleading, incomplete, or materially untrue information in a license application; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(2), a producer cannot violate any insurance law, or violate any regulation, subpoena, or order of the Commissioner, or of another state's insurance regulator; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(8), a producer cannot use fraudulent, coercive, or dishonest practices, or demonstrate incompetence, untrustworthiness, or financial irresponsibility in the conduct of insurance business in this State or elsewhere; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(9), a producer cannot have a producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(15), a producer cannot intentionally withhold material information or make a material misstatement in an application for a license; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(18), a producer must notify the Commissioner within 30 days of his conviction of any crime, indictment, or the filing of any formal criminal charges, or the suspension or revocation of any

insurance license or authority by a state, other than this State, or the initiation of formal disciplinary proceedings in a state, other than this State, affecting the producer's insurance license; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(19), a producer must notify the Commissioner within 30 days of the final disposition of any formal disciplinary proceedings initiated against the insurance producer, or disciplinary action taken against the producer, by the Financial Industry Regulatory Authority ("FINRA"), any successor organization, or other similar non-governmental regulatory authority with statutory authority to create and enforce industry standards of conduct, or of any other administrative actions or criminal prosecutions; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45c, any person violating any provision of the Producer Act shall, in addition to any other sanctions imposed by law, be liable for a civil penalty of not more than $5,000.00 for the first offense and not more than $10,000.00 for the second and each subsequent offense; and

WHEREAS, pursuant to N.J.S.A. 17:22A-47a, an insurance producer shall report to the Commissioner any administrative action taken against the insurance producer in another jurisdiction or by another governmental agency in this State

within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents; and

WHEREAS, pursuant to N.J.S.A. 17:22B-2, a public adjuster or adjuster means any individual, firm, association or corporation who, or which, for money, commission or any other thing of value, acts or aids in any manner on behalf of an insured in negotiating for, or effecting, the settlement of claims for loss of damage caused by, or resulting from, any accident, incident, or occurrence covered under a property insurance policy, including, but not limited to, a flood, transit, inland marine or ocean marine policy; or who, or which, advertises for, or solicits employment as an adjuster of those claims. The term "public adjuster" shall also include any individual who, for money, commission or any other thing of value, solicits or adjusts those claims on behalf of any public adjuster.

WHEREAS, pursuant to N.J.S.A. 17:22B-3a, no individual, firm, association, or corporation shall act as an adjuster in this State unless authorized to do so by virtue of a license issued or renewed pursuant to the Public Adjusters' Act; and

WHEREAS, pursuant to N.J.S.A. 17:22B-17, any person violating any provision of the Public Adjusters' Act shall, in

addition to any other sanctions provided by law, be liable for a civil penalty of not more than $2,500.00 for the first offense and not more than $5,000.00 for the second and each subsequent offense; and

WHEREAS, pursuant to N.J.S.A. 17:33A-4a(1), any person who presents or causes to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim violates the Fraud Act; and

WHEREAS, pursuant to N.J.S.A. 17:33A-5c, any person violating any provision of the Fraud Act shall, in addition to any other sanctions provided by law, be liable for a civil and administrative penalty of not more than $5,000.00 for the first offense, $10,000.00 for the second offense, and $15,000.00 for the third and each subsequent offense; and

WHEREAS, pursuant to N.J.S.A. 17:33A-5c, any person violating any provision of the Fraud Act shall, in addition to any others sanctions provided by law, be liable for restitution and costs of prosecution, including attorneys' fees; and

WHEREAS, pursuant to N.J.S.A. 17:33A-5.1, any person violating any provision of the Fraud Act shall, in addition to

any other sanctions imposed by law, be subject to a surcharge in the amount of $1,000.00; and

COUNT 1

IT FURTHER APPEARING that, on or about May 14, 1993, Citron's New York insurance producer license was revoked, in violation of N.J.S.A. 17:22A-40a(2) and (9); and

COUNT 2

IT FURTHER APPEARING that Citron failed to notify the Department within 30 days of the revocation of his New York insurance producer license, in violation of N.J.S.A. 17:22A-40a(2), (8) and (18) and N.J.S.A. 17:22A-47a; and

COUNT 3

IT FURTHER APPEARING that Citron has never been licensed as a public adjuster in the State of New Jersey; and

IT FURTHER APPEARING that, at all times relevant hereto, the New Jersey home of R.R. and C.R. was insured by New Jersey Manufacturers Insurance Co. ("NJM"); and

IT FURTHER APPEARING that, on or about October 29, 2012, the Manahawkin, New Jersey home of R.R. and C.R. was damaged by Superstorm Sandy; and

IT FURTHER APPEARING that, on or about December 20, 2012 R.R. and C.R. entered into a Professional Services Agreement ("Agreement") with Citron; and

IT FURTHER APPEARING that, pursuant to the Agreement, Citron agreed to "assist the client, prepare a report, provide opinions and perform other professional services on behalf of the client to their insurer NJ Manufacturers Ins. Co." in exchange for $1,000.00; and

IT FURTHER APPEARING that, on or about December 21, 2012, Citron contacted NJM and stated that he was a "claims expert" representing R.R. and C.R.; and

IT FURTHER APPEARING that, on or about December 21, 2012, Citron sent a letter to NJM stating that he was authorized by R.R. and C.R. to "act on [their] behalf with respect to their claim"; and

IT FURTHER APPEARING that, on or about December 21, 2012, Citron sent NJM a letter in which he stated that R.R. and C.R. had incurred $2,800 in damages from "food spoilage" resulting from "lack of power… due to the wind blowing down the pole and wires"; and

IT FURTHER APPEARING that, on or about December 31, 2012, Citron contacted NJM and stated that he had spoken with Jersey Central Power & Light regarding the power loss in the home of R.R. and C.R.; and

IT FURTHER APPEARING that on or about January 28, 2013, Citron sent NJM a letter in which he stated that he would be supplying "various estimates for the damages to the dwelling

both exterior and interior and the personal property" and that NJM's "adjuster missed several items in his appraisal"; and

IT FURTHER APPEARING that Citron also stated that R.R. and C.R. "suffered a loss of food due to spoilage totaling $3,100"; and

IT FURTHER APPEARING that, on or about January 30, 2013, Citron contacted NJM and disputed the amount and cause of the damages to the home of R.R. and C.R.; and

IT FURTHER APPEARING that, by acting or aiding on behalf of R.R. and C.R. in negotiating for, or effecting the settlement of claims for loss or damages caused by, or resulting from any incident covered under a property insurance policy, in exchange for money, Citron acted as a public adjuster, as defined in N.J.S.A. 17:22B-2, without being licensed to do so, in violation of N.J.S.A. 17:22B-3a and 17:22A-40a(2) and (8); and

COUNT 4

IT FURTHER APPEARING that, on or about October 27, 2012, in anticipation of Superstorm Sandy, R.R. shut the electricity off in his home; and

IT FURTHER APPEARING that R.R. did not return to his home until November 4, 2012; and

IT FURTHER APPEARING that, on or about November 26, 2012, a NJM adjuster took photos of the home of R.R. and C.R.,

which showed that the power lines and pole were not blown down during Superstorm Sandy; and

IT FURTHER APPEARING that, by falsely stating to NJM that R.R. and C.R. had suffered food spoilage damages resulting from "lack of power… due to the wind blowing down the pole and wires", Citron made a written or oral statement as part of or in support of a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contained false or misleading information concerning any fact or thing material to the claim, in violation of N.J.S.A. 17:33A-4a(1); and

COUNT 5

IT FURTHER APPEARING that, on March 24, 2014, the Louisiana Department of Insurance issued a Notice of Fine for Citron ("Notice"); and

IT FURTHER APPEARING that the Notice fined Citron $250.00 for failing to disclose the revocation of his New York insurance producer license on his September 11, 2001 Louisiana insurance agent license application; and

IT FURTHER APPEARING that, by failing to disclose the revocation of his New York insurance license on his Louisiana insurance agent license application, Citron intentionally withheld material information or made a material misstatement in an application for a license, in violation of N.J.S.A. 17:22A-40a(2), (8) and (15); and

COUNT 6

IT FURTHER APPEARING that Citron failed to notify the Department within 30 days of the issuance of the Notice and disciplinary action by the Louisiana Department of Insurance, in violation of N.J.S.A. 17:22A-40a(2), (8) and (19) and N.J.S.A. 17:22A-47a; and

COUNT 7

IT FURTHER APPEARING that, on February 5, 2015, the New Jersey State Grand Jury returned Indictment SGJ664-15-9 ("Indictment") against Citron; and

IT FURTHER APPEARING that the Indictment charged Citron with Insurance Fraud and Attempted Theft By Deception, in the amount of $2,800; and

IT FURTHER APPEARING that Citron failed to notify the Department within 30 days of his indictment, in violation of N.J.S.A. 17:22A-40a(2), (8) and (18); and

COUNT 8

IT FURTHER APPEARING that, on or about July 15, 2015, Citron completed and submitted an insurance producer renewal application; and

IT FURTHER APPEARING that, in response to "Have you been convicted of a felony… or are you currently charged with committing a felony, which has not been previously reported to this insurance department", Citron answered "No"; and

IT FURTHER APPEARING that, by falsely stating that he had not been charged with committing a felony on his insurance producer renewal application, Citron intentionally withheld material information or made a material misstatement in an application for a license, in violation of N.J.S.A. 17:22A-40a(2), (8) and (15); and

NOW, THEREFORE, IT IS on this 10TH day of SEPTEMBER 2015:

ORDERED that Citron appear and show cause why the New Jersey insurance producer license issued to him should not be suspended or revoked by the Commissioner and why Citron should not be fined up to $5,000.00 for the first violation of the Producer Act and not more than $10,000.00 for the second and each subsequent violation, pursuant to N.J.S.A. 17:22A-40 and -45c; and

IT IS FURTHER ORDERED that Citron appear and show cause why he should not be fined up to $2,500.00 for the first violation of the Public Adjusters' Act and not more than $5,000.00 for the second and each subsequent violation, pursuant to N.J.S.A. 17:22B-17; and

IT IS FURTHER ORDERED that Citron appear and show cause why he should not be fined up to $5,000.00 for the first violation of the Fraud Act, not more than $10,000.00 for the

second violation and not more than $15,000.00 for the third and each subsequent violation, pursuant to N.J.S.A. 17:33A-5c; and

IT IS FURTHER ORDERED that Citron appear and show cause why he should not be subject to additional penalties including reimbursement of the costs of investigation, prosecution, including attorneys' fees, and restitution authorized pursuant to the provisions of N.J.S.A. 17:22A-45c, 17:22B-17 and N.J.S.A. 17:33A-5; and

IT IS FURTHER ORDERED that Citron appear and show cause why he should not be subject to the statutory insurance fraud surcharge, pursuant to N.J.S.A. 17:33A-5.1; and

IT IS PROVIDED that Citron has the right to request an administrative hearing, to be represented by counsel or other qualified representative, at their own expense, to take testimony, to call or cross-examine witnesses, to have subpoenas issued, and to present evidence or argument if a hearing is requested; and

IT IS FURTHER PROVIDED that, unless a request for a hearing is received within twenty (20) days of the service of this Order to Show Cause, the right to a hearing in this matter shall be deemed to have been waived by the licensee and the Commissioner shall dispose of this matter in accordance with the law. A hearing may be requested by mailing the request to Virgil Dowtin, Chief of Investigations, Department of Banking and

Insurance, P.O. Box 329, Trenton, New Jersey 08625, or by faxing the hearing request to the Department at (609) 292-5337. The request shall contain the following:

(a) The licensee's name, address, and daytime telephone number;

(b) A statement referring to each charge alleged in this Order to Show Cause and identifying any defense intended to be asserted in response to each charge. Where the defense relies on facts not contained in the Order to Show Cause, those specific facts must be stated;

(c) A specific admission or denial of each fact alleged in this Order to Show Cause. Where the licensee has no specific knowledge regarding a fact alleged in the Order to Show Cause, a statement to that effect must be contained in the hearing request. Allegations of this Order to Show Cause not answered in the manner set forth above shall be deemed to have been admitted; and

(d) A statement requesting a hearing.

PETER L. HARTT
Director of Insurance