

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

COMMISSIONER OF BANKING AND INSURANCE,)	
)	OAL DKT. NO.: BKI 6993-08
Petitioner)	AGENCY DKT. NO.: E08-66
)	
v.)	FINAL DECISION AND ORDER
)	
PETER J. BONNELL, III, AND)	
INVESTORS UNION, LLC d/b/a)	
THE ANNUITY CENTER)	
)	
Respondents.)	

This matter comes before the Commissioner of the Department of Banking and Insurance (“the Commissioner”) pursuant to the authority of N.J.S.A. 52:14B-1, et seq., N.J.S.A. 17:1-15, the Insurance Producer Licensing Act of 2001 (N.J.S.A. 17:22A-26, et seq.) (“the Producer Act”), the Insurance Trade Practices Act (N.J.S.A. 17B:30-1, et seq.) (“the Trade Practices Act” or “the TPA”), and all powers expressed or implied therein, for the purpose of reviewing both the June 26, 2012 Order of Partial Summary Decision of Hon. Joseph F. Martone, A.L.J. (“ALJ Martone”), which granted in part and denied in part a Motion for Summary Decision (“the Bonnell Partial Summary Decision” or “the Partial Summary Decision” or “PSD”) brought by the Department of Banking and Insurance (“the Department”) on behalf of the Commissioner, and the May 19, 2014 Initial Decision (“ID”) of Hon. Lisa James-Beavers, A.L.J., (“ALJ James-Beavers”), granting the Department’s Motion for Partial Summary Decision seeking imposition of a \$279,000 civil penalty upon Respondents.

PROCEDURAL HISTORY

The Commissioner issued a four count Order to Show Cause (“OTSC”) on August 11, 2008, seeking to revoke the insurance producer licenses of the Respondents and impose monetary fines and assess the costs incurred by the Department in the investigation of this matter. The Commissioner alleged that the Respondents violated N.J.S.A. 17:22A-28, N.J.S.A. 17:22A-29, N.J.A.C. 11:17A-1.3(b), N.J.A.C. 11:17A-1.4(a), N.J.S.A. 17:22A-32b, N.J.S.A. 17:22A-40a(1), (2), (5), (7), (8), (9), (15), (17), and (18), N.J.A.C. 11:17-2.11(a)6, N.J.S.A. 17:22A-47a, N.J.S.A. 17B:30-4 and N.J.A.C. 11:17A-2.8.

Respondents filed an answer denying and contesting the allegations contained in Counts 1 through 3 of the OTSC. However, Respondent Investors Union, LLC (“Investors Union” or “IU”) admitted to the allegations contained in Count 4 of OTSC. Respondents requested a hearing.

The matter was transferred to the Office of Administrative Law (“the OAL”) on November 6, 2008, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

On August 18, 2009, the Department filed a joint Motion to Compel Discovery and to Amend the Order to Show Cause to join Janet L. Petri (“Petri”), Universal Fulfillment Systems, LLC, (“UFS”) and Client Builder, LLC, (“Client Builder”) as additional respondents due to allegations of continued violations of New Jersey’s insurance laws by those parties. On September 23, 2009, following a telephone conference, the ALJ ordered the Respondents to provide answers to all discovery requests within 30 days. Petri, Client Builder, and UFS objected to Petitioner’s Motion to Amend the Order to Show Cause to join additional parties and counts via written submission. On November 30, 2009, the Department replied to these objections. On April 9, 2010, ALJ Martone corresponded with the parties advising that the Petitioner would need to move by way of consolidation rather than joinder of Petri, Client

Builder and UFS. It is unclear from the record what attempts were made by the Department to join the additional parties. Ultimately, Petri, Client Builder and UFS were never formally joined as Respondents in this matter.

On or about July 26, 2011, Petitioner filed a Motion for Summary Decision, and Respondents submitted a Reply Brief on October 18, 2011.¹ On October 24, 2011, the Department submitted a reply to Respondents' opposition.² On June 26, 2012, the ALJ issued the Summary Decision granting in part and denying in part the Department's Motion. In this order, the ALJ granted summary decision to the Department on Counts 1, 3 and 4 of the OTSC. With respect to Count 2 of the OTSC, the ALJ found that the Department failed to show that Respondent Investors Union solicited insurance by initiating sales and initiating inquiries as to the terms of existing coverage in violation of N.J.S.A. 17:22A-29 and N.J.A.C. 11:17A-1.4(b), and failed to show that Respondents held themselves out as being engaged in the business of an insurance producer in violation of N.J.A.C. 11:17A-1.3(c).

As a result of Respondents' violations, the ALJ recommended that their insurance producer licenses be revoked. With respect to the question of an appropriate civil penalty, the ALJ ordered that the matter be scheduled for further proceedings on an expedited basis.

On October 18, 2012, the Department submitted a letter brief supporting its assertion that monetary penalties in the aggregate amount of \$279,000 should be imposed against Respondents. In a letter brief dated November 12, 2012, Respondent Peter J. Bonnell, III ("Respondent Bonnell" or "Bonnell") opposed the imposition of that penalty, arguing that it was unreasonable

¹ It appears that the Respondent Bonnell sent the Reply Brief to DAG McHugh on September 28, 2011, and DAG McHugh forwarded same to the ALJ who received the brief on October 18, 2011.

² On November 7, 2011, Respondents submitted a sur-reply. However, DAG McHugh, in a letter dated November 26, 2011, objected to the consideration of this sur-reply as Respondents failed to seek leave to file a sur-reply which is not permitted under the OAL Rules. It is unclear whether or not the ALJ considered this additional submission.

and excessive in light of the facts. On November 26, 2012, the Department submitted a reply to Respondents' opposition. The Respondents replied to this opposition on December 5, 2012.

This matter was subsequently transferred from ALJ Martone to ALJ James-Beavers. On May 19, 2014, ALJ James-Beavers issued an Initial Decision in which she granted the Commissioner's Motion for Partial Summary Decision and recommended imposition of a \$279,000 penalty on Respondents, which was in addition to the previous recommendation of license revocation discussed above. In this Order, after consideration of the seven factors for imposition of a civil penalty pursuant to Kimmelman v. Henkels & McCoy, 108 N.J. 123, 137-39 (1987), ALJ James-Beavers recommended imposition of penalties, jointly and severally, of \$250,000 as to Counts 1 and 2 for the fraudulent and deceptive postcards sent to New Jersey residents while Respondent Investors Union held itself out to the public as engaged in the business of insurance without a license, and as facilitated by Respondent Bonnell; a penalty of \$19,000 as to Count 3, consisting of \$1,000 for each of Respondent Bonnell's failures to notify the Commissioner within thirty days of the final disposition of nineteen separate regulatory actions; and a penalty of \$10,000 for Respondent's materially misleading, untrue and incomplete statement to the Department on Respondent Investors Union's June 23, 2006, license application. In making her findings on the penalties to be imposed, ALJ James-Beavers incorporated the findings of fact from the June 26, 2012 Order for Partial Summary Decision by ALJ Martone.

STATEMENT OF THE CASE

This matter involves allegations that Respondents engaged in deceptive business practices and, by so doing, violated the insurance laws of New Jersey by intentionally misleading New Jersey residents to believe that the communications they were receiving from Respondent Investors Union, d/b/a "The Annuity Service Center" were from their insurance carrier regarding

their current annuity contract. The Department alleged that this enabled Respondents to schedule sales appointments under the false pretense that the appointment was simply for a service review.

Count 1 of the OTSC alleges that, from at least April 2005 to June 23, 2006, Respondents engaged in a mass-mailing campaign soliciting primarily New Jersey residents over the age of 60 by sending 66,536 postcards to New Jersey residents in an effort to set up appointments with the recipients for the prospective sale of annuity contracts. Respondents then sold those pre-set appointments to local insurance producers. The OTSC alleges that each of the postcards sent by Respondents constitutes a separate violation of the insurance laws of this State and that these practices were in violation of N.J.S.A. 17:22A-28, N.J.S.A. 17:22A-29, N.J.S.A. 17:22A-40a(2), (5), (8), and (17); N.J.S.A. 17B:30-4 and N.J.A.C. 11:17A-1.3(b); N.J.A.C. 11:17A-1.4(a) and 2.8.

Count 2 of the OTSC alleges that Respondent Investors Union engaged in the business of insurance without a license from at least April 2005 to June 23, 2006, when Respondent Investors Union solicited New Jersey residents through the mass mailing of postcards as described in Count 1, for referral to insurance producers and the prospective sale of annuity contracts without being a licensed business entity insurance producer, in violation of N.J.S.A. 17:22A-28, N.J.S.A. 17:22A-29, N.J.S.A. 17:22A-32b, N.J.S.A. 17:22A-40a(2) and (8), and N.J.A.C. 11:17A-1.3(b) and N.J.A.C. 11:17A-1.4a. Count 2 also alleges that Respondent Bonnell was a principal of Respondent Investors Union and that he knowingly facilitated or assisted Respondent Investors Union in violating the insurance laws of this State, in violation of N.J.S.A. 17:22A-40a(2), (8), and (17).

Count 3 alleges that Respondents' mailing of the aforementioned postcards to recipients across the country led to the Respondents' involvement in numerous enforcement actions in many states including California, Delaware, Florida, Iowa, Illinois, Indiana, Missouri, Ohio,

Oklahoma and Utah, and that Respondents failed to abide by the Department's reporting requirements as enumerated in N.J.S.A. 17:22A-40a(2), (8), and (18), N.J.A.C. 11:17-2.11(a)6 and, in some cases, N.J.S.A. 17:22A-40a(7) and N.J.S.A. 17:22A-47A.

Count 4 alleges that Respondents provided a materially misleading, untrue and incomplete statement in the June 23, 2006 application for licensure of Respondent Investors Union by stating therein that neither the business entity nor any owner, partner, officer or director had ever been involved in an administrative proceeding regarding any professional or occupational license. Specifically, the OTSC alleges that the Respondents failed to notify the Department of a Cease and Desist Order entered by the Insurance Commissioner for the State of Oklahoma on or about December 1, 2005, and a Cease and Desist Order entered by the Insurance Commissioner for the State of Utah entered on or about February 8, 2006, in violation of N.J.S.A. 17:22A-40a(1), (2) and (15).

Pursuant to N.J.S.A. 17:22A-45c, the OTSC sought licensure penalties and the maximum fines for the multiple alleged violations of the Act, in the amounts of \$5,000.00 for the first offense and \$10,000.00 for each subsequent violation.

ALJ'S FINDINGS OF UNDISPUTED FACTS

Having considered the facts set forth in the Stipulation of Facts entered into by and between the parties and the undisputed certifications submitted by Deputy Attorney General McHugh and Investigator Suarez, the ALJ determined that all of the essential facts in this matter are not disputed. The ALJ found the following as facts:

1. Respondent Bonnell was licensed by the New Jersey Department of Banking and Insurance as a non-resident insurance producer from May 14, 2004, until the license expired on April 30, 2008. (PSD at 3).

2. Respondent Investors Union was licensed by the Department as a non-resident insurance producer from June 23, 2006, until July 31, 2008. (Ibid.)
3. Respondent Bonnell was the Designated Responsible Licensed Producer for Respondent Investors Union from June 23, 2006, and at all times relevant to this case. (Ibid.)
4. Respondent Bonnell was the owner and principal of Respondent Investors Union from November 2000 to November 2007, and at all times relevant to this case. (Ibid.)
5. Respondent Investors Union has done business under the fictitious name, owned and registered to Respondent Investors Union, "The Annuity Service Center." (Ibid.)
6. "Cold Solutions" was a brand name utilized and controlled by Respondent Investors Union. (Ibid.)
7. Respondents mailed postcards to New Jersey residents with one side of the postcard stating:

NOTICE

Dear Annuity Holder:

This notice is to inform you that you may have an annuity that has reached the end of its surrender period. Please contact Gayle Clary in the Annuity Service Center to discuss your options.
(800)560-9448

(Id. at 3-4).

8. Respondents mailed postcards to New Jersey residents as described in paragraph 7 above, with the opposite side of the postcard containing a return address of the "Annuity Service Center P.O. Box 1012, Medina, OH 44258" and stating in smaller print on the opposite side of the postcard:

(Please see notice on reverse side)

Privacy Law Notice. The Policy of the Annuity Service is to protect the privacy rights of all consumers who respond to this notice. The Annuity Service Center does not possess or disclose non-public personal information to third parties in any instance. If reviewed by a licensed agent referred by the Annuity Service Center, that agent is also required to adhere to the state and federal consumer and privacy protection laws. This notice is provided in accordance with Federal Privacy Laws. Important information: The Annuity Service Center is a registered trade name of Investors Union, LLC, a third-party agency, and this notice is being sent to you as a holder of an in-force annuity contract. This agency does not have a direct affiliation with the insurance carrier through which you are currently contracted. The agency is contracted with agents licensed to conduct insurance business in your state. This notice should be disregarded if you do not currently have an in-force annuity contract. The Annuity Service Center does not sell nor solicit the sale of insurance products.

(Id. at 4).

9. Respondents never possessed any direct or indirect knowledge of any specific annuity contract owned or controlled by a New Jersey resident prior to mailing the postcard to the New Jersey resident. (Id. at 4-5).
10. One objective of Respondents' general business practices or of the postcards mailed by Respondents to New Jersey residents was to prompt a call from the recipient of the postcard to Respondents. (Id. at 5).
11. Respondents employed at least 900 employees or agents over the course of its operations. (Ibid.)
12. Respondents maintained a call center with over 300 employees or agents. Upon receipt of a call solicited by the postcard, Respondents' employees or agents asked recipients for information regarding their annuity contract and/or insurance policy and attempted to schedule appointments for meetings between the recipient and an insurance agent or producer. (Ibid.)

13. None of the employees or agents operating in Respondents' call center or otherwise speaking with New Jersey residents in the course of employment, or on behalf of Respondents were licensed insurance producers in the State of New Jersey. (ibid.)
14. Respondents created and provided to call center employees or agents a "CCA Script" to be used on calls with recipients of Respondents' postcard stating:

The reason you received this postcard is because you may have had an annuity for some time and are due for a quick service review. This review will cover any UNCLEAR contract features as well as the financial stability of ALL companies with which you have an annuity. Are you getting your statements on a regular basis? If Yes: Yes Mr./Mrs. _____ is the servicing rep that will be conducting your review. He/She is currently scheduling on _____. Would you prefer morning or afternoon? Ok Ma'am/Sir, Mr./Mrs. He/She will be calling prior to his/her visit to introduce himself. Just be sure to have a copy of your statements ready for the review. I'm just going to confirm your information. If No: Do you get statements for an IRA or 401K? (If yes) Is that with your current employer? If No: set appointment. If it is with their current employer: Do you have any other investments? If yes: SET APPOINTMENT. IF NO INVESTMENTS AT ALL: ALSO, THE REPRESENTATIVES CONDUCT REVIEWS FOR LIFE INSURANCE POLICIES. DO YOU HAVE A LIFE INSURANCE POLICY? IF YES: SWITCH LEAD TYPE TO INSURANCE. IF NO: SWITCH LEAD TYPE TO REVERSE MORTGAGE. ***IF HAS INVESTMENTS AND NO APPOINTMENT READ PHONE CALL SCRIPT BELOW** If you would feel more comfortable I'd be happy to have a representative contact you by phone to answer any questions you have about the review. What is the best time to reach you? IF THEY SAY NO TO AN ANNUITY PHONE CALL: I ALSO WANT TO LET YOU KNOW THAT WE DO OFFER REVIEWS FOR LIFE INSURANCE POLICIES. DO YOU HAVE AN INSURANCE POLICY? IF YES: SWITCH LEAD TYPE TO INSURANCE.

(Id. at 5-6).

15. Respondents created and entered into a nine-page "Service Agreement" with client insurance agents containing a "General Purpose" provision stating:

This agreement will establish a business relationship among and between the aforementioned parties whereby IU will supply referrals and set appointments with individuals in the agreed locations throughout the United States for the Independent Agent to solicit insurance business with such individuals.

(Id. at 6-7).

16. Respondents' Service Agreement defines "Independent Agent," as:

The Independent Agent is the customer of IU under this Agreement. Further, each such customer warrants by entering into this Agreement that he or she is an independent insurance agent qualified to conduct insurance business within the jurisdiction IU will make appointments under this Agreement.

(Id. at 7).

17. Respondents' Service Agreement defines "Qualified Investor," as:

A 'Qualified Investor' (hereafter 'Investor') is an individual who has responded to IU's lead generation effort and meets the following three criteria: 1. At the time of the individual's response to IU the individual possessed investment assets; 2. The individual has indicated that he or she has received a periodic statement regarding those assets; and 3. The individual agreed to participate in the appointment with the Independent Agent set by IU for the purpose of a review of those investment assets.

(Ibid.)

18. Respondents' Service Agreement defines "IU SERVICES," as:

Immediately upon receipt of payment of fees IU will prepare and execute a mass mailing targeted towards individuals who may be Investors within the geographic area serviced by the Independent Agent; operate a telephone bank to accept incoming responses from those receiving mailers; and IU will further screen those incoming responses with the purpose of making the Appointments defined above.

(Ibid.)

19. Respondents' Service Agreement defines "INDEPENDENT AGENT RESPONSIBILITIES," to include: "The Independent Agent agrees to personally

participate in all training related to Cold Solutions and the Cold Trac system provided by IU.” (Id. at 7-8).

20. Respondents created and provided to clients and/or purchasing insurance agents a twenty-six-page “Agent Training Guide” under the brand name Cold Solutions with a Table of Contents reflecting the contents of the Training Guide as: Introduction and Philosophy, Lead Selection, Accessing the Cold Trac System, Appointment Calendar, Scheduling Your Availability, Appointment Details, Submitting an Appointment for Research, Training Resources, Qualification Calls, Confirmation Script, Common Objections, Building Rapport, Point of Sale, and Losing on the First Call. (Id. at 8).

21. Under the subject heading “Lead Selection,” Respondents’ “Agent Training Guide” states in part:

We avoid being too specific and avoid applying a large number of very specific criteria. This can result in a very limited number of qualified leads and tends to result in a list of prospects that has been targeted very heavily in the past...Mailings are sent daily on behalf of each Financial Advisor across the entire region the agent has selected.

(Ibid.)

22. Under the subject heading “Training Resources,” Respondents’ “Agent Training Guide” states in part:

Proper training regarding how to convert Cold Solutions appointments into sales is critical to your success with the program. We offer 3 ways to complete this training which is a requirement prior to running any appointments.

(Ibid.)

23. Under the subject heading “Qualification Calls,” Respondents’ “Agent Training Guide” states in part:

THE FOLLOWING TIPS ARE FIELD-PROVEN AND HAVE BEEN DEVELOPED THROUGH THE YEARS OF WORK ON THE PART OF FINANCIAL ADVISORS WHO HAVE HAD GREAT SUCCESS USING THE COLD SOLUTIONS SYSTEM. IT IS STRONGLY ADVISED YOU FOLLOW THEM TO THE LETTER TO ENSURE MAXIMUM SUCCESS ON YOUR PART. (Emphasis in original).

(Id. at 9).

24. Under the subject heading “Common Objections,” Respondents’ “Agent Training Guide” states in part:

How did you get my name? I am contracted with the Annuity Service Center who scheduled the appointment. This company specializes in assigning servicing agents to customers who have owned annuities for some time and want to understand all of their options. I am the servicing agent for this area.

(Ibid.)

25. Under the subject heading “How did you get my personal information?,” Respondents’ “Agent Training Guide” states in part:

This is simply a review to bring you up to speed on any potential changes that may have occurred within your contract and make you aware of any new features or benefits that have recently become available to you. I will be bringing this information to leave with you.

(Ibid.)

26. Under the subject heading “Why do I need to have a review on my annuity[,] I am happy with it?” Respondents’ “Agent Training Guide” states in part:

My job is to review all of the contract features and make sure that customers who have owned annuities for some time understand all of their options. Additionally, annuities are changing every year and the insurance companies are coming out with new more attractive features that you need to become aware of. This meeting is to bring you up to speed on new features that have recently become available to you. -OR- When you have held your annuity for a period of time your circumstances sometimes change, we

need to make sure that your current annuity meets your needs at this time...

(Id. at 9-10).

27. Under the subject heading "Building Rapport," Respondents' "Agent Training Guide" states in part: "Your first meeting will be a little different with the Cold Solutions client. **REMEMBER YOU ARE MEETING FOR A SERVICE REVIEW NOT A SALES CALL.** It is very important to establish credibility very early." (Emphasis in original).

(Id. at 10).

28. Under the subject heading "Building Rapport," Respondents' "Agent Training Guide" states in part:

Keep in mind that it's not a good idea to use complicated charts and graphs. The more complicated you make it seem, and the more options you give the client, the more sure the client is going to be that they are not prepared to make a decision today."

(Ibid.)

29. Under the subject heading "Building Rapport," Respondents' "Agent Training Guide" states in part:

At this point, proceed to go through their annuity contract page by page explaining all the features to them **while taking detailed notes.** While they are gaining valuable information, so are you. You should be sure to record the company, amount, policy issue date, surrender charge period, owner, annuitant, etc. (Emphasis in original).

(Ibid.)

30. Under the subject heading "Building Rapport," Respondents' "Agent Training Guide" states in part:

This type of sale will differ from what you are used to with your existing customers or referrals. Remember they know very little

about you and your company. It is important that you don't overwhelm the client by talking over their head. You must provide complete information but in a simple and easy to understand fashion. Too much complicated information will confuse the client. If the client is confused they will be sure of only one thing...they are not qualified to make a decision. If you uncover a need for change and confuse the client, they will be hesitant to make a decision even though it is in their best interest.

(Id. at 10-11).

31. Under the subject heading "Follow up is critical," Respondents' "Agent Training Guide" states in part:

The bottom line is 'Sales is Sales.' Some weeks everything you see will be a waste of time while during others; money will fall in your lap. The key is to maximize your opportunities. The Cold Solutions process is designed to free you from the heavy lifting. We dig through tons and tons of dirt to find you a few potential diamonds. The qualification process is critical in determining which of those are real. The better your [sic] master those skills, the more quality opportunities you will have.

(Id. at 11).

32. Respondents' Cold Solutions website, www.cold-solutions.com, as of June 26, 2008, contained a testimonial from New Jersey Insurance Producer Randy F., stating: "This is by far the best program we have come across in twelve years. This year we will certainly eclipse the \$1,000,000 in commissions and exceed \$20,000,000 in premium. Not too shabby!" (Ibid.)

33. Respondents' Cold Solutions website, www.cold-solutions.com, as of June 26, 2008 contained a testimonial from "M. Critchett, Seattle, WA.," stating:

Cold Solutions is a pleasure to work with because their success depends on our success. They go out of their way to help agents succeed. They don't just throw leads at you...they show you the way to be successful. All of this for a fair price. They can't guarantee success, as the agent has to be engaged and committed to his/her own success and take direction and not try to reinvent the wheel. When things go sideways, and they do at times, Cold

Solutions is the only lead company I'm aware of who steps up to the plate and goes to solutions with no hesitation. What more could you want? For someone to give you more than you expected? That's a winning relationship, isn't it?

(Id. at 11-12).

34. Respondents' Cold Solutions website, www.cold-solutions.com, as of June 26, 2008, contained a testimonial from Respondent Bonnell's mother and former New Jersey insurance producer, Janet Petri, stating:

In my 23 years as a representative I have never seen a lead generation company like Cold Solutions! The leads they provide have REAL assets to review and usually multiple accounts. Thanks to Cold Solutions I have hired 5 new reps and will semi retire in 2007!

(Ibid.)

35. Respondents' Cold Solutions website, www.cold-solutions.com, as of June 26, 2008, contained an audio testimonial entitled "Listen to a representative who produced nearly \$7,000,000 in sales in his first year using Cold Solutions," in which Edinburg, Texas insurance producer, John Champion, states in part:

[T]he thing that makes this thing so different and gives the professional rep, because like you said earlier you have to be professional, what gives the professional rep a keen advantage is that uniqueness of this program; you're not going in there as a normal typical salesperson; you're going in there under the premise of doing maintenance service, evaluation, basically bringing them up to speed on changes...and then the real magic...starts to unweave and that's uncovering their other assets...no other system, no other program, ever has taken that approach, and so what it does is it kills 99.9% of the defense mechanisms that you would normally encounter, with the typical sales system...what you've done is you've outlined word for word, and I mean literally to newcomers, word for word on what they need to say; because if you go in there and try to turn this in to a normal sales approach, you're going to get hang-ups, you're going to get people saying 'I thought you were going to check out this annuity-well who are you with?', and you are going to create your

own objections; but if you follow the script word for word...then there is no way you can fail.

(Id. at 12-13).

36. Respondents' Cold Solutions website, www.cold-solutions.com, as of June 26, 2008, contained an audio testimonial entitled "Listen to a representative compare Cold Solutions to seminar marketing," in which Kansas City, Missouri insurance producer, Mark, spoke about how different Cold Solutions is from seminars and how critical it is to follow Cold Solutions' script, and Respondents' employee Linda Shurr (f/n/a Linda Bakalis) responds:

That's excellent, you know because it gives you some of the comfort because you can get in the program and really just read a script. I've actually had people tell me they've blown it up and posted it to their wall and read it, and they've never done anything like that before. That goes to show you how simple it is.

(Id. at 13).

37. Respondents' Cold Solutions website, www.cold-solutions.com, as of June 26, 2008, contained an audio testimonial entitled "Hear an Independent Agent who uses Cold Solutions to attract new representatives to his agency," in which New Jersey insurance producer Randolph Fisher states in part, "the bottom line is there is a recipe for success because all they have to do is follow the training, follow the phone scripts, and the rest is history." (Id. at 13-14).

38. Respondents' Cold Solutions website, www.cold-solutions.com, as of June 26, 2008, stated: "Cold Solutions sends millions of mailers every year to individuals profiled as qualified investors generating over 100,000 inbound calls every month." (Id. at 14).

39. From May 2004 through November 2007, Respondents mailed postcards as detailed in paragraph 7 above, to 65,536 New Jersey residents. (Ibid.)
40. From May 2004 through November 2007, Respondents sold a total of 11,359 pre-set appointments with New Jersey residents to purchasing insurance agents for an aggregate fee of \$973,548.06. (Ibid.)
41. On June 6, 2006, Monmouth Junction, New Jersey resident, O.S. called the Annuity Service Center in response to Respondents' postcard and Respondents' employee, Alice Holloway, verified that O.S. owned an annuity, set up an appointment for O.S. to meet with Randolph Fisher on June 15, 2006, and verified that O.S. would have his annuity statements ready. On June 14, 2006, O.S. called the Annuity Service Center to cancel his appointment with Randolph Fisher and was transferred to Respondents' Supervising Employee, Jamie Shupe. O.S. advised that he has already talked to the representative and since the representative could not specify his investment he does not want to have the appointment. (Ibid.)
42. On October 18, 2006, Williamstown, New Jersey resident, E.M., who owned a MetLife Annuity, received Respondents' postcard and called the Annuity Service Center in response. An employee of Respondents could not advise E.M. as to which annuity the postcard was referring to and asked E.M. who is holding E.M.'s annuity and whether she is getting monthly statements. Respondents' employee advised that they could not give E.M. any information so they would send a representative to E.M.'s home. On November 1, 2006, Art Pollack spoke to E.M. and advised that he definitely should come to E.M.'s home to discuss E.M.'s annuity. (Id. at 14-15).

43. On December 29, 2006, South Plainfield, New Jersey resident, J.C. called the Annuity Service Center in response to Respondents' postcard and Respondents' employee, Jordan Vince, verified that J.C. owned an annuity, set up an appointment with Randolph Fisher on January 5, 2007, and verified that J.C. would have his annuity statements ready. On January 4, 2007, J.C. called the Annuity Service Center to cancel his appointment with Randolph Fisher. J.C. advised that he talked to Mr. Fisher that morning and Mr. Fisher told him that he does not know what investments he has therefore he wants to cancel the appointment. (Id. at 15).
44. On November 30, 2005, the Oklahoma Insurance Commissioner issued an Emergency Cease and Desist Order against Respondent Investors Union. (Ibid.)
45. On February 8, 2006, Utah Insurance Department issued a Cease and Desist Order against Respondent Investors Union. (Ibid.)
46. On January 9, 2006, the Iowa Insurance Commissioner issued a Statement of Charges against Respondent Bonnell. (Ibid.)
47. On June 12, 2006, Respondent Bonnell provided sworn testimony in an administrative hearing before the Iowa Department of Inspections and Appeals, Docket No. 06DOCID002. (Ibid.)
48. On a June 23, 2006 application to the New Jersey Department of Banking and Insurance by Respondent Investors Union for a non-resident insurance producer license, Respondents answered "no" to question number 2, asking:

Has the business entity or any owner, partner, officer, director ever been involved in an administrative proceeding regarding any professional or occupational license?... 'Involved' means having a license censured, suspended, revoked, canceled and terminated; or being assessed a fine, placed on probation or surrendering a license to resolve an administrative or arbitration proceeding which is related to a professional or occupational license.

(Id. at 16).

49. On December 16, 2006, the Iowa Insurance Commissioner entered into a Consent Order with Respondent Bonnell, whereby Respondent Bonnell expressly consented to Cease and Desist violations of the insurance and securities statutes and rules of the State of Iowa. (Ibid.)

50. On August 14, 2006, the Missouri Department of Insurance issued an Order to Show Cause why an order to Cease and Desist should not be issued against Respondent Investors Union and the parties entered into an Agreement on December 5, 2006, and an Amendment to the Agreement dated January 15, 2007. (Ibid.)

51. On August 15, 2006, the Kansas Insurance Department issued a Subpoena Duces Tecum to Respondent Investors Union and question number 10 asked Investors Union to: "Identify what information you relied upon to obtain the names of the three individuals mentioned above" and Respondent Investors Union responded to the subpoena stating:

When an independent insurance agent executes a contract with Investors Union, it purchases a mailing list from a commercial source (currently USA data, 292 Madison Avenue, Third Floor, NY, NY 10017) of consumers meeting a demographic profile of those more likely to be annuity investors (e.g., homeowners who are age 55 to 84) in the counties to be served by this independent agent.

(Id. at 16-17).

52. On August 17, 2006, the Delaware Department of Insurance issued a Cease and Desist Order against Respondent Investors Union and Respondent Bonnell, and on April 30, 2007, a Consent Order was entered. (Id. at 17).

53. On August 25, 2006, the Illinois Attorney General filed a Complaint for Injunction and Other Relief against Respondent Investors Union, Respondent Bonnell and Linda Bakalis, and a Final Judgment and Consent Decree was subsequently entered. (Ibid.)
54. On October 9, 2006, the Florida Department of Financial Services issued an Emergency Order against Respondent Bonnell, and on October 25, 2006, an administrative complaint was issued. A Settlement Stipulation for Consent Order was entered on December 10, 2008. (Ibid.)
55. On December 18, 2006, the Iowa Department of Insurance entered into a Consent Order with Respondent Bonnell. (Ibid.)
56. On or about March 22, 2007, the Minnesota Commissioner of Insurance entered into a Consent Order with Respondent Investors Union. (Ibid.)
57. On March 8, 2007, the Indiana Department of Insurance issued a Statement of Charges against Respondent Bonnell and Respondent Investors Union, and on May 18, 2007, the parties entered into an Agreed Entry, and on May 24, 2007, a Final Order and Approval was issued. (Id. at 18).
58. On June 13, 2007, the Ohio Department of Insurance entered into a Consent Order with Respondent Investors Union. (Ibid.)
59. On July 19, 2007, the Louisiana Department of Insurance issued a Cease and Desist Order against Respondent Investors Union. (Ibid.)
60. On July 23, 2007, the Kentucky Office of Insurance issued an Order against Respondent Investors Union, and on May 12, 2008, the parties entered into an Agreed Order in which Respondent Investors Union expressly consents to cease doing business in the Commonwealth of Kentucky. (Ibid.)

61. On April 8, 2008, the California Department of Insurance issued an Order to Show Cause against Respondent Investors Union, Respondent Bonnell and Linda Mary Bakalis, and on or about October 17, 2008, a Stipulation and Order was entered. (Ibid.)
62. In or around June 2008, the State of Wisconsin entered into a Stipulation for Entry of Judgment with Respondent Bonnell, Linda Schurr and Respondent Investors Union. (Ibid.)
63. Respondents did not notify the New Jersey Department of Banking and Insurance in writing of any of the above administrative or civil actions against Respondent Bonnell and/or Respondent Investors Union within thirty days of the initiations and final dispositions thereof. (Ibid.)
64. The 2006 Form 1065 IRS Tax Return of Respondent Investors Union lists "Gross receipts or sales \$6,767,811." (Id. at 19).
65. The 2007 Form 1065 IRS Tax Return of [Respondent Investors Union] lists "Gross receipts or sales \$3,837,368." (Ibid.)
66. Respondent Bonnell is currently the owner and principal officer of Client Builder, LLC, P.O. Box 1012, Medina, OH 44258, which was organized and registered in the State of Ohio on or about January 29, 2008. (Ibid.)
67. Respondent Bonnell's mother, Janet L. Petri organized and registered Universal Fulfillment Systems, LLC (UFS) in the Commonwealth of Virginia on or about February 1, 2008. (Ibid.)
68. Client Builder entered into an agreement with UFS whereby Client Builder would refer agents to UFS in return for UFS providing their services exclusively to agents under Client Builder's hierarchy. (Ibid.)

69. Client Builder's State of Ohio registration certificate references its office is to be located at 620 East Smith Rd. Medina, OH 44256. (Ibid.)
70. Client Builder's fictitious name is registered as "Annuity and Retirement Services." (Ibid.)
71. Client Builder's website states:
- Client Builder provides you with access to the most powerful marketing programs available. Your calendar is filled with qualified appointments booked at the dates and items you specify. In addition, you are literally flooded with leads of people who have a variety of assets and have agreed to receive a phone call. Our goal is to help you write more business and we specialize in giving you the tools to make it happen.
- (Id. at 19-20).
72. Client Builder's website states: "WOW! I can't believe how easy it was to get a HUGE response from my mailers! I can't tell you how many years I have tried to master the marketing game. I feel like I just found the goose that laid the golden egg." (Id. at 20).
73. Client Builder's website states:
- Now you can access these valuable resources that produce consistent predictable results! Best of all, we handle virtually EVERYTHING for you. We do the work so you can reap the rewards." The fine print at the bottom of the website states: "Marketing programs are offered through unaffiliated third party companies."
- (Ibid.)
74. UFS Marketing's principal office is located at 620 East Smith Rd., Medina, OH 44256. (Ibid.)
75. UFS' website states that UFS is a "simple, powerful and effective way to fill your calendar with qualified appointments FAST!" (Ibid.)

76. UFS' website states:

We handle EVERYTHING! We print your customized mailers and send them directly to your ideal demographic. Highly trained call center associates take inbound calls adhering strictly to your personalized script. This ensures that every appointment and lead is qualified exactly to your specifications.

(Id. at 20-21).

77. At least one Client Builder cover letter is signed by Holly Becht who was also an employee at Respondent Investors Union. (Id. at 21).

78. A form provided to an agent by Client Builder requires the agent to sign below a paragraph which states:

I hereby authorize Insurance Advocates and Client Builder LLC to complete the contracting requirements with only the companies I have initialed or checked above. I understand that I may receive a copy of the entire contract upon request. I also understand I must send back the unique signature page for my contracting to be valid and that the purpose of this datasheet is to collect initial data and that Insurance Advocates and/or Client Builder, LLC will contact me for additional information that may be required.

(Ibid.)

79. The bottom of the Client Builder form states: Please Read, Sign and Fax back to (330)721-1064. (Ibid.)

80. The fax number (330)721-1064 is also provided by UFS as UFS' fax number.

(Ibid.)

81. UFS' Master Services Agreement states:

This Agreement will establish a business relationship among and between the aforementioned parties whereby UFS will supply fulfillment services on behalf of the Customer. Marketing materials will be mailed to the general public on behalf of the Customer in accordance with the instructions received from the Customer and calls will be taken from the general public on behalf of the Customer in accordance with the Customer's instructions.

(Ibid.)

82. Client Builder and UFS sold “fulfillment services” to licensed NJ insurance producer, Sean Fitzsimmons and mailed postcards to at least 1,703 female New Jersey residents between the ages of 58 and 78, stating: “NOTICE Dear Annuity Holder: This notice is to inform you that you may have an annuity that has reached its surrender period.” (Id. at 22).
83. Client Builder has paid thousands of dollars in commissions to Respondent Bonnell’s mother, Janet Petri, as recently as April 19, 2011. (Ibid.)

ALJs’ LEGAL CONCLUSIONS

ALJ MARTONE PARTIAL SUMMARY DECISION AND LICENSE REVOCATION

ALJ Martone determined that, pursuant to N.J.A.C. 1:1-12.5(b) and Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995), summary decision should be granted to the Department in full on the violations alleged in Counts 1, 3 and 4, and granted in part and denied in part with respect to Count 2. ALJ Martone utilized the standard elucidated in Brill and noted that, “In making a determination on a motion for summary judgment, the judge should consider whether the competent evidential materials presented, when viewed in the light most favorable to the nonmoving party are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the nonmoving party. (PSD at 24, quoting Brill, supra, 142 N.J. at 523).

ALJ Martone determined that N.J.S.A. 17:22A-40(a) provides that the Commissioner may suspend or revoke an insurance producer’s license or levy a civil penalty for several reasons, including a violation of any of the statutory provisions enumerated in N.J.S.A. 17:22A-40a(2), (5), (8), (17), and (18). Moreover, ALJ Martone found that the Commissioner may impose a penalty not exceeding \$5,000 for the first violation of the Producer Act and \$10,000 for

each subsequent offense, and that the Commissioner may also order restitution of money owned any person and reimbursement of the costs of investigation and prosecution. N.J.S.A. 17:22-45c; N.J.A.C. 11:17A-1.8.

ALJ Martone also noted that N.J.S.A. 17:22A-28 and N.J.A.C. 11:17A-1.3(b) require an insurance producer to be licensed under the laws of this State to sell, solicit or negotiate insurance. Moreover, ALJ Martone noted that, pursuant to N.J.S.A. 17:22A-28:

'solicit' means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer; 'negotiate' means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract or policy of insurance concerning any of the substantive benefits, terms or conditions of the contract or policy, provided that the person engaged in that act either: sells insurance or obtains insurance from insurers for purchasers; 'sell' means to exchange a contract or policy of insurance by any means, for money or its equivalent, on behalf of an insurer.

(PSD at 22, citing N.J.S.A. 17:22A-28).

ALJ Martone noted that Chapter 30 of the Life and Health Insurance Code, N.J.S.A. 17B:30-1 to 47, and its implementing regulations, N.J.A.C. 11:17A-2.1 to 2.11, regulate trade practices in the business of life insurance, health insurance, and annuities "by defining, or providing for the determination of, all such practices in this State which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined." N.J.S.A. 17B:30-1. Pursuant to N.J.S.A. 17B:30-4, "[n]o person shall make, publish, disseminate, circulate, or place before the public...in the form of a...pamphlet, letter or poster...an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance and annuities or with respect to any person in the conduct of his insurance and annuity business, which is untrue, deceptive or misleading."

Count 1

For the reasons discussed below, ALJ Martone determined that Respondents used fraudulent, coercive or dishonest practices in the conduct of the business of an insurance producer and committed fraudulent acts when they sent the postcards to consumers in violation of N.J.S.A. 17:22A-40a(8) and (16) and knowingly facilitated or assisted other people in violating insurance laws in violation of N.J.S.A. 17:22A-40a(17). For substantially similar reasons, the ALJ held that the postcard disseminated to the public by Respondents included the deceptive representation that recipients may have had an annuity that had reached its surrender period in contravention N.J.S.A. 17B:30-4, which prohibits the dissemination or circulation to the public of untrue, deceptive or misleading information in the sale of life and health insurance and annuities.

ALJ Martone also noted that that the Commissioner has relied on the Black's Law Dictionary definition of "fraud" to determine whether an insurance producer has engaged in a fraudulent act under the Producer Act, which defines fraud as "[a] generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated." Black's Law Dictionary 660 (6th ed. 1990).

ALJ Martone noted the deceptive and misleading nature of the language in the postcard and specifically referenced the following verbiage: "Dear Annuity Holder: **This notice is to inform you that you may have an annuity that has reached the end of its surrender period.** Please contact Gayle Clary in the Annuity Service Center to discuss your options." (PSD at 25). ALJ Martone noted that the language is deceptive for several reasons. First, Respondents admitted to not having knowledge as to whether or not the recipients of the postcards actually

had an annuity or, if they did, whether their annuity had reached the end of the surrender period. (*Ibid.*) Second, “a reasonable person is likely to believe that he or she had to call the number provided in order to clear up any issues with his or her existing annuity contract.” (*Ibid.*) ALJ Martone emphasized that the caller would, in all likelihood, have no idea that the Annuity Service Center in actuality had no authority to service any annuity because the only language informing consumers of this arrangement was in small print on the other side of the postcard. (*Id.* at 25-26).

ALJ Martone also noted that the deceptive nature of the postcard was evidenced by the Respondents’ business model wherein the language on the postcard induced consumers to call the Annuity Service Center whether or not they owned an annuity. (*Id.* at 26). ALJ Martone also noted the deceptive language in the script provided to Annuity Service Center employees which directed them to state to consumers that, “[t]he reason you received a postcard is because you may have had an annuity for some time and are due for a quick service review.” (*Ibid.*) Moreover, these calls were designed to induce consumers to buy a product. ALJ Martone noted the success of this approach, as the Respondents sold more than 11,000 pre-set appointments with New Jersey consumers to insurance agents for an aggregate fee of \$973,548.06. (*Ibid.*)

For the foregoing reasons, ALJ Martone concluded that the Respondents had violated N.J.S.A. 17:22A-40a(8), (16)³, (17) and N.J.S.A. 17B:30-4 and granted the Department’s motion for summary judgment as to Count 1. (*Id.* at 26-27.)

Count 2

ALJ Martone granted in part and denied in part the Department’s motion with respect to Count 2. (PSD at 31-32). The ALJ determined that there was no genuine issue of material fact that Respondent Investors Union held itself out to the public as being engaged in the business of

³ We note that Count 1 of the OTSC did not charge that conduct was a violation of N.J.S.A. 17:22A-40a(16). This will be addressed below in the Legal Discussion section.

an insurance producer when it did not possess a license in this State in violation of N.J.A.C. 11:17A-1.3(c), and Respondent Bonnell knowingly facilitated or assisted Respondent Investors Union in violating N.J.A.C. 11:17A-1.3(c), which constitutes a violation of N.J.S.A. 17:22A-40a(2) and (17). (Id. at 31). However, ALJ Martone determined that the Department failed to show that Respondents solicited insurance by initiating sales and initiating inquiries as to the terms of existing coverage in violation of N.J.S.A. 17:22A-29 and N.J.A.C. 11:17A-1.4(b), or that Respondents held themselves out to insurance producers as being engaged in the business of an insurance producer in violation of N.J.A.C. 11:17A-1.3(c). (Ibid.)

ALJ Martone noted that, pursuant to N.J.S.A. 17:22A-28, the term solicit is defined as “attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer” and that N.J.A.C. 11:17A-1.4(b) defines soliciting as including “initiating sales over the telephone” and “initiating an inquiry as to the terms of existing coverage, except exclusively in the course of clerical duties.” (Id. at 27-28.) ALJ Martone rejected the Department’s arguments that Respondents, through their postcards and phone calls, attempted to sell insurance or initiate an inquiry into the terms of existing coverage noting that the parties stipulated that... “[Respondent] Investors Union maintained a call center with 300 employees’ who asked postcard recipients ‘for information regarding their annuity contract or insurance policy and attempted to schedule appointments for meetings between the recipient and an insurance agent or producer.’” (PSD at 28, citing Stipulation of Facts, ¶¶9, 11, 14, 15). ALJ Martone reasoned that the factual stipulations and the “Service Agreement” demonstrated that Respondents gave referrals to insurance producers with the understanding that the insurance producers would then solicit insurance from the postcard recipients. (Id. at 28).

ALJ Martone also rejected the Department’s argument that Respondents inquired into the terms of the existing coverage. (Id. at 29). ALJ Martone noted that, “The parties stipulated that

[R]espondents ‘asked for information regarding [postcard recipients’] annuity contract or insurance policy’” and that the Respondents would provide insurance producers with leads. (Id.) ALJ Martone noted that the “Agent Training Guide” provided advice to insurance producers as to how to make sales which is not statutorily prohibited. Based on the foregoing, the ALJ did not find that Respondents themselves inquired into the terms of existing annuities. (Id.)

ALJ Martone did determine that Respondents held themselves out to the public as being engaged in the business of an insurance producer, as the postcards “deceptively stated that ‘[t]his notice is to inform you that you may have an annuity that has reached the end of its surrender period.’” (Id. 29-30). ALJ Martone determined that this could “reasonably be interpreted” that Respondents were acting as insurance producers. (Ibid.) Moreover, ALJ Martone agreed with the Department’s assertion that Respondent Investors Union and its employees did not engage in clerical duties which N.J.A.C. 11:17A-1.2 defines as “the administrative and underwriting tasks accomplished in the office and under the supervision of the insurer or licensed producer that are necessary to produce the insurance contract in accordance with the insurer’s or producer’s normal procedures and systems.” (Id. at 29). ALJ Martone determined that the call center employees’ actions were not “accomplished in the office and under the supervision of the insurer or licensed producer nor were the duties necessary to produce the insurance contract in accordance with the insurer’s or producer’s normal procedures and systems.” (Ibid.)

Count 3

Because Respondents stipulated to failing to notify the Commissioner within thirty days of the initiation or final disposition of nineteen administrative or civil proceedings against them, ALJ Martone found that Respondents violated N.J.S.A. 17:22A-47a, N.J.S.A. 17:22A-40a(2) and (18) and N.J.A.C. 11:17-2.11(a)(6), and granted the Department’s Motion for Summary Judgment on this Count. (PSD at 32).

Count 4

With respect to Count 4, ALJ Martone determined and Respondents admitted to providing a materially misleading, untrue and incomplete statement to the Department on Respondent Investors Union, LLC's application for licensure dated June 23, 2006, by stating that they had never been involved in an administrative proceeding regarding any professional or occupational license. As a result, the ALJ determined that Respondents violated N.J.S.A. 17:22A-40a(1), (2), and (15). (PSD at 32-33).

Having concluded that Respondents Bonnell and Respondent Investors Union violated relevant portions of the insurance laws of the State of New Jersey, ALJ Martone recommended that the Respondents' insurance producer licenses be revoked. (PSD at 34). Moreover, ALJ Martone ordered that the matter be scheduled for further proceedings on an expedited basis with respect to the question of civil penalties. (Ibid.)

ALJ JAMES-BEAVERS' INITIAL DECISION AND CIVIL FINE RECOMMENDATION

On May 19, 2014, ALJ James-Beavers issued the Initial Decision, which addressed monetary penalties and incorporated the findings of fact from ALJ Martone's June 26, 2012 Order for Partial Summary Decision. (ID at 3). ALJ James-Beavers also referred to the standard for granting summary judgment in Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995), which was earlier enunciated. (Id. at 3-4.) ALJ James-Beavers noted that, to determine the appropriate penalties under the Producer Act, the Commissioner has consistently applied the factors enumerated by Kimmelman v. Henkels & McCoy, 108 N.J. 123, 137-39 (1987), which established the following seven factors to evaluate the imposition of administrative fines: (1) the good or bad faith of the defendant; (2) the defendant's ability to pay; (3) the amount of profits obtained from the illegal activity; (4) injury to the public; (5) the duration of the illegal activity; (6) the existence of criminal actions; and (7) past violations.

With respect to the Kimmelman factors, ALJ James-Beavers made the following findings:

On factor (1), that Respondents acted in bad faith. First, ALJ James-Beavers noted that, not only could Respondents not have reasonably believed that their conduct was legal, but they continued to send out deceptive postcards even after they learned of the possibility that said activities could potentially be illegal. (ID at 5-6). In addition, other state authorities brought regulatory actions against Respondents for the same activities and Respondents continued to engage in this deceptive activity even after being subject to these state actions. (Id. at 6). The ALJ also determined that Respondent Bonnell demonstrated bad faith by lying on his application for an insurance producer license and failing to notify the Department of the other state actions. (Ibid.);

On factor (2), that the Department did not show that Respondent Bonnell currently has the ability to pay a \$279,000 penalty. The ALJ acknowledged Respondent Bonnell's assertion that he had "virtually no income" because he had recently filed bankruptcy and was subject to monetary penalties in other enforcement actions arising in other states. However, ALJ James-Beavers noted that Respondent Bonnell's assertion that all of his companies were dissolved was rebutted by the Department, which made his other claims of poverty suspect. (Ibid.);

On factor (3), that, as a result of the deceptive postcards, Respondent Investors Union earned \$973,548.06 in sales. (Id. at 7);

On factor (4), that the Respondents' conduct in violation of the insurance laws did cause injury to the public. Specifically, the illegally obtained profits caused harm to the public and the deceptive nature of the business practice in issue here undoubtedly caused consumers to lose confidence in the insurance industry. (Ibid.);

On factor (5), that the activity took place from 2004 to 2007 and weighs in favor of a large penalty. (ibid.);

On factor (6), that the Respondents' actions did not give rise to criminal or treble damages actions and thus any penalties imposed in this matter would not be duplicative of any other sanctions. (Id. at 7); and

On factor (7), that there were no prior violations of the Producer Act by the Respondents. (Id. at 8).

Based upon the foregoing analysis, ALJ James-Beavers concluded that it is appropriate that the following fines be assessed, jointly and severally, against Respondents: Counts 1 and 2: \$250,000; Count 3: \$19,000, consisting of \$1,000 for each of Respondent Bonnell's failures to notify the Commissioner within thirty days of the final disposition of nineteen separate regulatory actions; and Count 4: \$10,000. (Id. at 9). Overall, the ALJ granted the Commissioner's motion for partial summary decision with regard to the appropriate monetary penalty and recommended imposition of fines totaling \$279,000 jointly and severally against the Respondents. (Id.)

PETITIONER'S EXCEPTIONS

The Department submitted timely Exceptions in which it concurs with ALJ Martone's granting of summary decision on Counts 1, 3, and 4 of the OTSC. However, the Department requests the following modifications and supplements to the PSD and Initial Decision.

The Department urges the rejection of the partial denial of summary decision with respect to Count 2, and urges that I find that the Respondents' deceptive postcards and overall business scheme be considered solicitation of insurance to New Jersey residents. (Exceptions Brief at 2). The Department notes that N.J.S.A. 17:22A-29 prohibits an unlicensed person from selling or soliciting insurance and that, pursuant to N.J.S.A. 17:22A-28, "solicit" is defined as "attempting

to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer.” (Exceptions Brief at 4). Moreover, N.J.A.C. 11:2-23.1, et seq., regulates the sale of both life insurance and annuities and is intended to assure a full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies and annuity contracts. The rule defines advertisement as “material designed to create public interest in life insurance or annuities or in an insurer, or to induce the public to purchase, increase, modify, reinstate or retain a policy....” (Exceptions Brief at 4, citing N.J.A.C. 11:2-23.1 and N.J.A.C. 11:2-23.3.)

The Department urges the rejection of the denial of summary decision on Count 2 for several reasons. First, the Department avers that Respondents’ deceptive postcards were solicitations for insurance to New Jersey residents. (Exceptions Brief at 5). The Department describes the mailing of the postcards as the initial phase of the solicitation, wherein the recipients read the following language on the postcard itself: that he or she “may have an annuity that has reached the end of its surrender period,” and which language further urges them to contact the Annuity Service Center. (Ibid.) The Department argues that this statement, in and of itself, is designed to induce the recipient to purchase, increase, modify, reinstate or retain their current annuity. The Department argues that this postcard is an advertisement and an advertisement is designed to induce its recipients, some of whom were New Jersey consumers, to purchase, increase, modify, reinstate or retain an annuity which, as the Department asserts, would amount to a solicitation in violation of N.J.S.A. 17:22A-29. (Ibid.)

The Department also argues that the scheme devised by Respondents in and of itself constituted solicitation “through a concert of action between Respondents and insurance producers.” (Exceptions Brief at 5). The Department argues that, “Respondents solicited

insurance business before selling the solicited leads to producers to continue the sale.” (Exceptions Brief at 5-6).

The Department also contends that, contrary to ALJ Martone’s findings, Respondents further solicited insurance by inquiring into consumers’ terms of existing coverage by including language on the postcard which urged the recipients to contact the Annuity Service Center. The Department emphasized that, pursuant to N.J.A.C. 11:17A-1.4(b), “selling, soliciting or negotiating an insurance contract includes, but is not limited to, initiating an inquiry as to the terms of the existing coverage.” (Exceptions Brief at 6). The Department argues that, by communicating that recipients “may have an annuity that has reached the end of its surrender period” and by further urging the recipients to contact the Annuity Service Center, Respondents were making an inquiry as to the terms of their existing coverage because it was designed to deceive recipients into thinking they needed to contact the Annuity Service Center, and by so doing, employees at the Annuity Service Center could inquire into the terms of their coverage. (Exceptions Brief at 7). The Department also referred to the “CCA Script” utilized by the call center employees of the Annuity Service Center which clearly urged them to inquire into the type of insurance owned by the consumer. (Exceptions Brief at 8).

The Department also asserts that Respondents held themselves out as being engaged in the business of an insurance producer to insurance producers. (Exceptions Brief at 8). The Department argues that Respondents, in recruiting insurance agents to participate in Respondents’ scheme, made the insurance agents aware of their scheme including the language on the postcard and contained in their script. (Ibid.) The Department argues that, therefore, the insurance agents were aware of Respondents’ ongoing solicitations, and therefore Respondents held themselves out as being engaged in the business of an insurance producer to the insurance producers.

The Department also requested that the Final Decision revoke Respondents' insurance producer licenses as recommended by ALJ Martone because the Commissioner has consistently ordered revocation against producers who engage in fraudulent and dishonest conduct. See Commissioner v. Uribe and Inter-America Insurance Agency, LLC, OAL Dkt. No. BKI 07363-07, Final Decision and Order E11-77 (09/28/11). The Department also requested adoption of the fine as recommended by ALJ James-Beavers.

RESPONDENT'S REPLY EXCEPTIONS

The Respondents submitted no exceptions or reply exceptions in this matter.

LEGAL DISCUSSION

Following a complete review of the evidential record and the Exceptions submitted by the Department, I have determined to adopt the factual findings and conclusions of law reached by ALJ Martone in the June 26, 2012 Order of Partial Summary Decision, which findings were incorporated into the Initial Decision by ALJ James-Beavers, on Counts 1, 3 and 4 and Partial Grant of Summary Decision on Count 2, with certain supplements to Counts 1 and 3 that are discussed below. However, with respect to the Partial Denial of Summary Decision on Count 2, the Initial Decision is modified with regard to the legal conclusions therein. I have also determined to adopt the license revocations recommended by ALJ Martone and the monetary penalties recommended by ALJ James Beaver in the Initial Decision.

N.J.S.A. 52:14B-9 provides a party in a contested administrative case the opportunity for a hearing at which the party may present evidence and argument on all issues involved. Such matters, however, may be subject to summary decision. N.J.A.C. 1:1-12.5(b) provides the standard to determine whether summary decision should be granted in a contested case. Specifically, the rule states that a summary decision may be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no

genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” Ibid. The rule also provides that “when a motion for summary decision is made and supported, an adverse party, in order to prevail must, by responding affidavit, set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid.

In Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520 (1995), the New Jersey Supreme Court clarified the summary judgment standard. The Court held that a determination whether there exists a genuine issue of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party. The court said:

The judge’s function is not himself (herself) to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. [Id. at 540 quoting Liberty Lobby, 477 U.S. 242 at 251-252)]. To send a case to trial, knowing that a rational jury can reach but one conclusion, is indeed worthless and will serve no useful purpose. [Id. at 541].

Similarly, motions for summary judgment in civil actions are considered under R. 4:46-2. It provides that the motion sought shall be granted if the evidence adduced shows there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. R. 4:46-2(b). An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact. R. 4:46-2(c). The Brill Court noted that “by its plain language, R. 4:46-2 dictates that a court should deny a summary judgment motion only

where the party opposing the motion has come forward with evidence that creates a genuine issue as to any material fact challenged. Id. at 529.

Based upon this well-established standard, I concur with ALJ Martone that Respondents failed to adduce evidence to demonstrate a genuine issue as to any material fact and that the current record constitutes ample evidence upon which to grant the Department's Motion for Summary Decision. This is especially true where a Stipulation of Facts entered into by the Respondents admitted 83 separate paragraphs of uncontested facts that demonstrate that they engaged in the business scheme as described in the OTSC. Therefore, there was no need to establish that Respondents engaged in such conduct through the submission of evidence at a hearing.

The conduct of insurance producers after November 4, 2002, is governed by the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to 48. The Producer Act endows the Commissioner with the authority to regulate the business of insurance producers in the State of New Jersey. The Act and its predecessor were intended not only to impose penalties and provide restitution but, more importantly, to protect the public from illegal and unethical actions by insurance producers. See In Re Parkwood, 98 N.J. Super. 263, 268 (App. Div. 1967); Fortunato v. Del Mauro, 93 N.J.A.R.2d (INS) 37.

Under the Producer Act, I have the authority to revoke or suspend an insurance producer license and to require the payment of fines, restitution, and costs of investigation and prosecution for any of the enumerated prohibited conduct or for other violations of the insurance laws of this State. N.J.S.A. 17:22A-40. N.J.S.A. 17:22A-40a provides that I may suspend or revoke the license of an insurance producer for any one or more of the following causes:

- (1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;
- (2) Violating any insurance laws or regulation; ...

- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract, policy or application for insurance; ...
- (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
- (8) Using any fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business; ...
- (15) Intentionally withholding material information or making a material misstatement in an application for a license;
- (16) Committing any fraudulent act;
- (17) Knowingly facilitating or assisting another person in violating any insurance laws; or
- (18) Failing to notify the Commissioner within 30 days of the suspension or revocation of any insurance license or authority by another state or the initiation of formal disciplinary proceedings in another state affecting the producer's insurance license

Through the evidence and the undisputed facts, the Department clearly established that Respondents repeatedly violated New Jersey's insurance laws by mailing 66,536 deceptive and misleading postcards to New Jersey residents and establishing sales appointments under the guise of a service review. The facts in evidence establish that Respondent Bonnell was licensed by the Department as a non-resident insurance producer from May 4, 2004, until April 30, 2008, when the license expired, and that Respondent Investors Union was licensed by the Department as a non-resident insurance producer from June 23, 2006, until July 31, 2008. (PSD at 3). Respondent Bonnell was the DLRP, owner, and principal of Investors Union, which operated under the fictitious name of The Annuity Center, and as such is responsible for the business entity's compliance with the insurance laws of this State. See, N.J.S.A. 17:22A-32b(2).

During the course of their business operations, Respondents mailed the aforementioned postcards, which clearly contained deceptive and misleading language on both sides, to New Jersey residents. The act of mailing these postcards and the language contained therein was clearly violative of the insurance laws of this State as decided by the ALJ. For example, on the

front side of the post card which had a return address for the Annuity Center, the following language appeared: "NOTICE Dear Annuity Holder: This notice is to inform you that you may have an annuity that has reached the end of its surrender period. Please contact Gayle Clary in the Annuity Service Center to discuss your options." (PSD at 3-4). In sending these postcards, Respondents' admitted objective was to induce the recipient to call the Annuity Center, regardless of whether or not the recipient was the holder of an annuity. (Id. at 5). Respondents admitted that they never possessed any knowledge of a specific annuity contract owned or controlled by a New Jersey resident receiving their postcard. (Id. at 5-6). Notably, the language contained on the back of the postcards sent out during the mass mailing contained a long disclaimer, which partially included the following language: "This agency does not have a direct affiliation with the insurance carrier through which you are currently contracted. The agency is contracted with agents licensed to conduct insurance business in your state. This notice should be disregarded if you do not currently have an in-force annuity contract." (Id. at 4). However, the language immediately preceding the aforementioned language read as follows; "...this notice is being sent to you as a holder of an in-force annuity contract" which, as previously addressed, is misleading as the Respondents did not know whether or not the recipient had an annuity. (Ibid.)

The conduct that occurred when a recipient called the Annuity Service Center was equally problematic. To answer consumer calls in response to the deceptive postcard, the Respondents employed 900 employees or agents over the course of their operation and maintained a call center with 300 unlicensed employees or agents. (Id. at 5). Respondents further admit that they provided the unlicensed call center employees or agents with a "CCA Script" for the employees or agents to use on calls with New Jersey residents that contained additional misrepresentations and inquired as to the nature and status of the consumers' personal

financial information and investments. (Id. at 5-6). Ultimately, Respondents engaged in a massive business enterprise during which their employees - who were not licensed as insurance producers engaged the consuming public in conversations about the annuities and investments currently held by the consumers for the purpose of setting appointments for an insurance producer that purchased these “leads.” Then, the producer would make contact with the “lead” as pre-vetted by the Respondents to sell, solicit or negotiate a new insurance product to the consumer

In this regard, as so enunciated by the ALJ, the aforementioned egregious conduct constitutes multiple violations of the Producer Act as alleged in Count 1 of the OTSC. First, the ALJ properly determined, and I agree, that the deceptive language and design of the postcard violates N.J.S.A. 17:22A-40a(8), as a fraudulent, coercive, and dishonest practice, and N.J.S.A. 17:22A-40a(16), as a fraudulent act, because Respondents sought to take advantage of consumers through the false suggestions in the postcard. The ALJ also properly determined that Respondents knowingly facilitated or assisted other people namely the unlicensed call center employees - in violating insurance laws, in contravention of N.J.S.A. 17:22A-40a(17).⁴

Moreover, the ALJ properly determined that the mailing of the postcards violated N.J.S.A. 17B:30-4 which states that “[n]o person shall make, publish, disseminate, circulate, or place before the public...in the form of a notice, circular, pamphlet, letter or poster...an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance and annuities or with respect to any person in the conduct of his insurance and annuity business, which is untrue, deceptive or misleading.”

⁴ I note that the OTSC also charges that Respondents’ deceptive postcard practices also constitute violations of N.J.S.A. 17:22A-28 and -29, N.J.S.A. 17:22A-40a(2) and (5), N.J.A.C. 11:17A-1.3(b) and -1.4(a), and N.J.A.C. 11:17A-2.8. The ALJs did not make any determinations with regard to these violations, and the Department filed no Exceptions in this regard. For these reasons, I hereby dismiss only these charges of Count 1 of the OTSC that were not addressed in the Partial Summary Decision or Initial Decision.

Additionally, I ACCEPT the ALJ's findings that Investors Union, d/b/a The Annuity Center, through these actions held itself out to the public as engaged in the business of an insurance producer in violation of N.J.A.C. 11:17A-1.3(c) which states that, "...holding oneself out to the public or an insurance producer as being so engaged, shall be sufficient proof of engaging in the business of an insurance producer so as to require licensure..." I also accept the ALJ's findings that Respondent Bonnell knowingly facilitated or assisted Investors Union in violating N.J.S.A. 11:17A-1.3(c), constituting a violation of both N.J.S.A. 17:22A-40a(2) and (17).

However, I REJECT the ALJ's partial denial of the Department's Motion for Summary Decision in which he determined that Respondents' conduct did not constitute solicitation of an insurance product without a license in violation of N.J.S.A. 17:22A-29 and N.J.A.C. 11:17A-1.4(b). I hereby find that, through its mass mailing of postcards and through its operation and employment of The Annuity Center as described above and found by the ALJ, the Respondents solicited insurance business as defined by the Producer Act and regulations during the period in which Investors Union was not licensed. Additionally, Respondent Bonnell as the DLRP and owner is responsible for this conduct. Moreover, I find that Respondents held themselves out as insurance producers to other insurance producers.

Pursuant to N.J.S.A. 17:22A-29, an unlicensed person is prohibited from selling or soliciting insurance, and N.J.A.C. 11:17A-1.4(a) prohibits any person from selling, soliciting, or negotiating insurance without an appropriate license. N.J.S.A. 17:22A-28, defines "solicit" as "attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer." Further, pursuant to N.J.A.C. 11:17A-1.4(b), soliciting includes, but is not limited to, "initiating sales over the telephone or otherwise" or "initiating an inquiry as to the terms of existing coverage, except exclusively in the course of clerical duties."

Respondents engaged in a solicitation as defined by both N.J.S.A. 17:22A-28 and N.J.A.C. 11:17A-1.4(b) and in contravention of the Producer Act and its regulations in multiple ways. First, Respondents engaged in solicitation by mailing the deceptive postcards with the ultimate intention of inducing the recipients to purchase a product. Moreover, Respondents engaged in solicitation through coordination between the call center employees and the insurance producers, also for the ultimate end of having the consumers purchase a product.

N.J.A.C. 11:2-23.1 regulates the sale of life insurance and annuities, including the information contained in advertising of these insurance products. Pursuant to N.J.A.C. 11:2-23.3, “[a]dvertisement’ means material designed to create public interest in life insurance or annuities or in an insurer, or to induce the public to purchase, increase, modify, reinstate or retain a policy.” The deceptive postcards referred to herein were clearly advertisements as defined above as they were designed to create public interest in annuities and to induce the public to purchase an annuity if they did not have one or, increase or modify their existing annuity policy. Here, the act itself of mailing the postcards containing an advertisement constitutes a solicitation as the very purpose of an advertisement is to induce the public to purchase, increase, or modify a policy.

Moreover, because the deceptive postcards contained language urging the recipient to contact the Annuity Service Center, this solicitation was continued once the recipient made contact with the Annuity Service Center. At this point, the call center employee, pursuant to training materials and a detailed script they were obligated to follow, made every effort to induce a sale. Such efforts included inquiring into the details of the individual’s current policy. For example, Respondents stipulated that the call center employees utilized a “CCA Script” wherein the first statements to the caller were as follows: “The reason you received this postcard is because you may have had an annuity for some time and are due for a quick service review. This

review will cover any UNCLEAR contract features as well as the financial stability of ALL companies with which you have an annuity. Are you getting your statements on a regular basis?" (PSD at 5). Essentially, the purpose of this initial conversation was for the call center employee to assess whether or not the caller had an insurance or investment product and, if so, what type. Therefore, the mailing of these postcards in and of itself constitutes a solicitation. And this conduct, in conjunction with the scripted conversations between call center employees and members of the public wherein the employee inquired into the terms of the recipient's current contract constituted a solicitation pursuant to N.J.S.A. 17:22A-28, N.J.S.A. 17:22A-29 and N.J.A.C. 11:17A-1.4(a).

In his June 26, 2012 Partial Summary Decision Order, the ALJ acknowledged "that [R]espondents 'asked for information regarding (postcard recipients') annuity contract or insurance policy." (PSD at 29). The ALJ also acknowledged that the papers show that "[R]espondents agreed, through the 'Service Agreement,' to provide insurance producers with leads [they] that had confirmed with [R]espondents that they 'possessed investment assets' and had 'received a periodic statement regarding those assets.'" (Ibid.) However, despite this evidence and these admissions, the ALJ found that "the papers also show that [R]espondents advised insurance producers through the 'Agent Training Guide' to review the features of postcard recipients' existing annuities." (Ibid.) The ALJ reasoned that, because the insurance producer would ultimately review the terms of the existing annuities and pursue the final sale, the call center employee did not engage in solicitation. I disagree. I find that, for the reasons elucidated above, the actions of the call center employees constituted solicitation pursuant to N.J.S.A. 17:22A-28, N.J.S.A. 17:22A-29 and N.J.A.C. 11:17A-1.4(a), and I therefore REJECT the ALJ's findings in this regard.

Moreover, I REJECT the ALJ's findings that Respondents did not hold themselves out as insurance producers to other insurance producers in contravention of N.J.A.C. 11:17A-1.3. During the course of their business operations, Respondents informed the insurance producers engaged in their business scheme of the language on the postcards that were disseminated and in the script that was utilized by the call center employees. As I have earlier held, by disseminating the postcards and utilizing the script, the unlicensed call center employees engaged in solicitation. In soliciting, the call center employees were essentially acting as producers. The producers who contracted with Investors Union were aware of this conduct and, therefore, the call center employees held themselves out as producers to insurance producers in violation of N.J.A.C. 11:17A-1.3.

I also ACCEPT the ALJ's findings that Respondents stipulated to failing to notify the Commissioner within thirty days of the initiation or final disposition of nineteen proceedings against them in other states, in violation of N.J.S.A. 17:22A-47(a), N.J.S.A. 17:22A-40a(2), (18) and N.J.A.C. 11:17A-2.11(a)(6). Moreover, I ACCEPT the ALJ's findings that Respondents provided a materially, misleading, untrue and incomplete statement to the Department on Investor Union's June 23, 2006 application for licensure.

Prior decisions have consistently held that producer misconduct that involves violations of State insurance laws and evidences bad faith and dishonesty compels license revocation. The Producer Act "is designed not only to impose penalties and provide restitution but more importantly to protect the public from the illegal and unethical actions by insurance agents and brokers." Commissioner v. Ayodeji, 97 N.J.A.R.2d (INS) 13, 15. Thus in addition to monetary penalties, a producer may also be subject to suspension or revocation of his license for such conduct. Respondents' admissions and the evidence produced by the Department establish that Respondents' actions as alleged in the OTSC are consistent with a pervasive pattern of

misleading and deceptive language and Respondents' attempt to conduct a broad scheme of solicitation of insurance through employees who were not licensed to do so.

In light of all of the above, I ACCEPT the ALJ's recommendation of license revocation of both Respondents' expired insurance producer licenses.⁵ Lastly, I also ACCEPT the ALJ's ultimate findings as to monetary penalties and the analysis of the Kimmelman factors other than ability to pay. I MODIFY that analysis as follows. ALJ James-Beavers noted that the Department did not show that Respondent Bonnell currently has the ability to pay a \$279,000 penalty and acknowledged Respondent Bonnell's assertion that he had "virtually no income" because he had recently filed bankruptcy and was subject to monetary penalties in other enforcement actions arising in other states. I reject the ALJ's framing of the issue as whether the Department demonstrated that Respondent Bonnell had the ability to pay a fine. As noted by the Court, the focus is that "[t]he greater a defendant's income and financial resources, the larger a penalty will have to be in order to deter unlawful behavior." Kimmelman, supra, 108 N.J. at 137. While ALJ James-Beavers appropriately noted that Respondent Bonnell asserted an inability to pay a significant penalty, under Kimmelman this is not dispositive. As I have determined in other producer matters, a limited ability to pay monetary penalties is only one mitigating factor that may be outweighed by other Kimmelman factors that support the imposition of substantial fines. See, Commissioner v. Erwin, OAL Dkt. No. BKI4573-06, Initial Decision (7/9/07), Final Decision and Order No. E07-78 (9/17/07); and Commissioner v. Robert Stone, OAL Dkt. No.: BKI 6301-07, Initial Decision (6/16/08); Final Decision and Order No. E08-82 (9/15/08). Here, the ALJs found that "[Respondent Bonnell's] companies earned millions of dollars in sales in the past," the presence of bad faith, and a long duration of the nefarious activity, all of which outweigh the Respondent's assertions of an inability to pay and

⁵ See, N.J.S.A. 17:22A-40d (Commissioner retains the authority to impose a penalty or remedy authorized by the Producer Act against any person, even if a license is surrendered or expired).

warrant imposition of a significant penalty. (ID at 6). Based upon the Kimmelman analysis as modified herein and the nature of the violations committed by the Respondents, the imposition of fines totaling \$279,000 is clearly supported by the record and well within the broad discretion afforded this office. The revocation of the insurance producer licenses of Respondents and the imposition of substantial fines are fully warranted, not only as sanctions upon the Respondents for their misconduct, but also because they will serve as a deterrent to other producers who might be tempted to engage in similar conduct.

CONCLUSIONS

Having carefully reviewed the Respondent Bonnell and Investors Union Partial Summary Decision Order dated June 26, 2012, the Respondent Bonnell and Investors Union Initial Decision dated May 19, 2014, the Department's Exceptions and the evidential record herein, I hereby ADOPT the ALJ's Findings of Fact and Conclusions of Law regarding the insurance law violations which Respondents have committed with respect to Counts 1, 3 and 4 of the OTSC, in addition to Count 2 with respect to the findings that there was no genuine issue of material fact that Respondent Investors Union held itself out to the public as engaged in the business of an insurance producer in violation of N.J.A.C. 11:17A-1.3(c) and that Respondent Bonnell knowingly facilitated or assisted Investors Union in violating N.J.A.C. 11:17A-1.3(c), which constitutes a violation of N.J.S.A. 17:22A-40a(2) and (17) as stated in that Order.

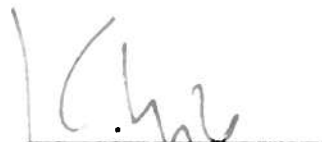
I FIND that the record contains sufficient competent and credible evidence to establish that Respondent Investors Union solicited insurance by initiating sales and initiating inquiries as to the terms of existing coverage in violation of N.J.S.A. 17:22A-29 and N.J.A.C. 11:17A-14(b). I also FIND that Respondents held themselves out to insurance producers as being engaged in the business of an insurance producer in violation of N.J.A.C. 11:17A-1.3(c). Accordingly, I REJECT the Partial Denial of Summary Decision to the Department on Count 2 and

CONCLUDE that Respondent Investors Union solicited insurance and that Respondents held themselves out to insurance producers as being engaged in the business of an insurance producer and MODIFY the Summary Decision Order to grant summary decision to the Department on the violations of the Producer Act alleged in Count 2 as discussed above.

I also ADOPT the recommendation of ALJ Martone with regard to revocation of the Respondents' producer licenses and the findings and fine recommendations issued by ALJ James-Beavers in the Initial Decision dated May 19, 2014 as follows: Counts 1 and 2: \$250,000; Count 3: \$19,000, consisting of \$1,000 for each of Respondent Bonnell's failures to notify the Commissioner within thirty days of the final disposition of nineteen separate regulatory actions; and Count 4: \$10,000. I therefore adopt the ALJ's conclusion that the Commissioner's motion for partial summary decision seeking a penalty of \$279,000 on Respondents is granted

IT IS SO ORDERED this 6th day of October, 2014 that the Respondent Bonnell and Respondent Investors Union Summary Decision Order dated June 26, 2012 and the Respondent Bonnell and Investors Union Initial Decision dated May 19, 2014 are ADOPTED in part, REJECTED in part, and MODIFIED as set forth herein.

This Order constitutes a final agency decision. Any appeal from this order must be filed with the Superior Court of New Jersey, Appellate Division, within 45 days from the date of the service of this Order.


Kenneth E. Kobylowski
Commissioner

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