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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MONMOUTH COUNTY
DOCKET NO. MON-L-1566-21

MARLENE CARIDE,)
COMMISSIONER OF THE)
NEW JERSEY DEPARTMENT OF)
BANKING AND INSURANCE,)
Plaintiff,)
v.)
WHITNEY WHITAKER,)
Defendant.)

Civil Action
**ORDER FOR FINAL
JUDGMENT BY DEFAULT**

THIS MATTER HAVING BEEN opened to the Court on the application of Andrew J. Bruck, Acting Attorney General of New Jersey, (by William E. Vaughan, Deputy Attorney General, appearing), attorney for Plaintiff, Marlene Caride, Commissioner of the New Jersey Department of Banking and Insurance on a motion for judgment by default; and

Defendant, Whitney Whitaker ("Defendant"), having been duly

served with a copy of the Summons and Complaint in the above-captioned action, and default having been entered for Defendant's failure to appear, answer, or otherwise defend;

This Court now finds that Defendant violated the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -30 ("Fraud Act") by making false statements in support of automobile insurance applications and claims.

Specifically, Defendant misrepresented in two applications for automobile insurance and in connection with two automobile insurance claims, that Defendant resided and her vehicle was garaged in Matawan, New Jersey when, in fact, Defendant resided and her vehicle was garaged in the Bronx, New York, in violation of N.J.S.A. 17:33A-4(a)(1), -4(a)(3), -4(a)(4)(a), and -4(a)(4)(b); and

FINAL JUDGMENT is on this 17th day of December 2021, entered in the amount of \$19,650.00 against Defendant, and in favor of Plaintiff, Marlene Caride, Commissioner of the New Jersey Department of Banking and Insurance as follows:

- (a) \$15,000.00 in civil penalties for four (4) violations of the Fraud Act, N.J.S.A. 17:33A-5(b);
- (b) attorneys' fees of \$3,500.00 pursuant to N.J.S.A. 17:33A-5(b);
- (c) costs of service in the amount of \$150.00 against Defendant pursuant to N.J.S.A. 17:33A-5(b); and

(d) a statutory fraud surcharge of \$1,000.00 pursuant to N.J.S.A. 17:33A-5.1.

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 39:6A-15, Defendant's driving privileges will be suspended for a period of one (1) year from the date of this judgment.

IT IS FURTHER ORDERED, that a copy of this Order be served upon all parties within seven (7) days of the date of receipt.

/S/ HENRY P. BUTEHORN, J.S.C.
HENRY P. BUTEHORN, J.S.C.

This motion was:

_____ Opposed
xx Unopposed

This motion is unopposed and that put forth in the moving certification and supporting proofs is without dispute. The complaint in this matter was filed on May 6,2021. Defendant was properly served with the summons and complaint and failed to answer within the time provided by Rules of Court. Default was properly entered against defendant pursuant to Rule 4:43-1. Defendant is not a minor or incompetent and plaintiff satisfied the requirements for the court to hear this motion for default judgment. See R. 4:43-2.

Plaintiff's claim is based upon four violations of the New Jersey Insurance Fraud Prevention Act (Act), N.J.S.A. 17:33A-1 to -30. On December 18, 2018 defendant applied for automobile insurance for her vehicle. (See Murray Cert., paragraph 3). Defendant represented her residence and the location the vehicle was garaged as Matawan, New Jersey. (See Murray Cert., paragraph 4). Those representations were false as defendant did not live at that address nor was the vehicle housed there. (Id., paragraphs 5-6). Defendant filed a claim with

Progressive insurance company for damages to the vehicle and represented her address and the location the vehicle was garaged as Matawan, New Jersey. (Id., paragraphs 7-8).

Defendant filed another application for insurance for the vehicle. The second application was made on January 6, 2019 with Esurance Insurance Company. (Id., paragraph 13).

Defendant represented her residence and where she garaged the vehicle was in Matawan, New Jersey. (Id., paragraphs 14 and 15). Those representations were false. (Id.). Defendant also filed a claim for damage to the vehicle with Esurance. (Id., paragraph 16). The claim was filed on January 14, 2019 and defendant spoke with an Esurance representative about the claim the following day. (Id., paragraph 17). Defendant misrepresented her address and location the vehicle was garaged during the conversation. (Id., paragraph 18). Defendant made a similar misrepresentation to a representative of Esurance during a January 22, 2019 conversation. (Id., paragraphs 20-21).

The foregoing constitutes violations of N.J.S.A. 17:33A-4(a)(1), -4(a)(3), -4(a)(4)(a), and -4(a)(4)(b). Those statutes are within the New Jersey Insurance Fraud Prevention Act. N.J.S.A. 17:33A-4(a) state it is a violation of the act if a person:

(1) 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 or thing material to the claim;

...

(3) conceals or knowingly fails to disclose the occurrence of an event which affects any person's initial or continued right or entitlement to (a) any insurance benefit or payment or (b) the amount of any benefit or payment to which the person is entitled;

(4) prepares or makes any written or oral statement, intended to be presented to any insurance company or producer for the purpose of obtaining;

(a) a motor vehicle insurance policy, that the person to be insured

maintains a principal residence in this State when, in fact, that person's principal residence is in a state other than this State; or

- (b) an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to an insurance application or contract.

Plaintiff can bring an action for penalties upon the foregoing violations. N.J.S.A. 17:33A-5(a)(1); see also N.J.S.A. 17:33A-5(b) (indicating the penalties imposed "shall be paid to the commissioner" and used as required by the Act). The civil remedy is a penalty against the party violating the Act shall be "of not more than \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for each subsequent violation." N.J.S.A. 17:33A-5(b). In light of the four violations by defendant here the court could award up to \$45,000. However, plaintiff also seeks one third that amount and, as that is consistent with the statute, the court shall enter the judgment accordingly.

In addition, upon finding violations of the Act the court "shall also award court costs and reasonable attorneys' fees" to plaintiff as part of the award in the civil action. Id. As part of this motion plaintiff put forward the proofs of attorneys fees and costs. The court found the attorneys fees to be fair and reasonable considering the type and extent of work involved, experience of those performing the work, as well as the usual and customary rate charged for such work in this area. The court shall therefore add the requested attorneys' fees to the award as the amount of the fees is less than what could be awarded. (See, moving certification, paragraph 21). The costs incurred were also reasonable and necessary such that they shall be included in the award.

Next, N.J.S.A. 17:33A-5.1 states there "shall" be the imposition of a surcharge in the amount of \$1,000 for those persons found to have committed insurance fraud as part of any legal proceeding. This action is such a proceeding and it has been found above that plaintiff engaged in such conduct in violation of the various subsections within N.J.S.A. 17:33A-4. The

surcharge is required and is “[i]n addition to any other penalty, fine or charge imposed pursuant to law.” N.J.S.A. 17:33A-5.1. Thus, the court must add that surcharge to the judgment in this case.

Finally, pursuant to N.J.S.A. 39:6A-15, “[i]n addition to any penalties imposed by law, any person who is [found] to have violated any provision of [N.J.S.A. 17:33A-1 et. seq.] . . . shall not operate a motor vehicle over the highways of this State for a period of one year from the date of judgment.” This judgement shall memorialize the outcome pursuant to that statute.