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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - GLOUCESTER COUNTY
DOCKET NO. GLO-L-000863-21

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

Civil Action

ORDER OF FINAL JUDGMENT
BY DEFAULT

THIS MATTER HAVING BEEN opened to the Court on the application of Matthew J. Platkin, Attorney General of New Jersey, (by Jessica Lugo, Deputy Attorney General, appearing), attorney for Plaintiff, Marlene Caride, Commissioner of the New Jersey Department of Banking and Insurance on a motion for final judgment by default; and

Defendant, Ericka Stroud ("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 (i) made a knowingly false oral statement to an insurance company in order to reinstate a lapsed insurance policy, and (ii) made an oral statement to an insurance company in support of a claim for payment or other benefit pursuant to an automobile insurance policy knowing that the statement contained false information concerning material facts, both in violation of the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -30 ("Fraud Act").

Specifically, Defendant (i) falsely represented to an insurance company in order to reinstate her automobile insurance policy that neither she nor anyone else in her household had been involved in an automobile accident between the date her automobile insurance policy lapsed and the date she reinstated her policy, when in fact her vehicle had been in an accident during that period, in violation of in violation of N.J.S.A. 17:33A-4(a)(4)(b), and (ii) falsely represented to an insurance company that the vehicle was damaged after she reinstated the automobile insurance policy, when in fact the accident occurred before she reinstated the policy, in violation of N.J.S.A. 17:33A-4(a)(1).

FINAL JUDGMENT is on this 31st day of March, 2023, entered in the amount of \$11,156.00 against Defendant and in favor of Plaintiff, Marlene Caride, Commissioner of the New Jersey Department of Banking and Insurance. This amount consists of \$5,000.00 in civil penalties for two (2) violations of the Fraud Act pursuant to N.J.S.A. 17:33A-5(b); attorneys' fees of \$5,076.00 pursuant to N.J.S.A. 17:33A-5(b); cost of service in the amount of \$80.00 pursuant to N.J.S.A. 17:33A-5; and 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 shall 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 7 days of the date of receipt.

/s/ Timothy W. Chell, P.J.Cv.

, J.S.C.

This motion was:

_____ Opposed

_____ Unopposed

The issue before the Court is a motion to enter default judgment. R. 4:43-2(b) governs the entry of a default judgment by the Court. Procedurally, an entry of default judgment may only be entered following an entry of default once the defendant's time period for answering the complaint has expired. R. 4:43-2 cmt. 2.4; see Gladstone v. Berk, 233 N.J. Super. 228, 241-42 (App. Div. 1989). In moving for the entry of a default judgment, the movant must certify that

the defaulting party is neither a minor nor a mentally incapacitated person, unless that person is represented by a guardian or guardian ad litem. R. 4:43-2(b).

Defendant opposes the motion simply stating "Documents sent to incorrect address." The Court finds Defendant's opposition to this motion filed on February 17, 2023 states a new mailing address of 2049 Barnsboro Road #Y5, Blackwood, NJ 08021. See Opposition at Page 1.

Parties must attempt personal service first before resorting to construction or substituted service. Pressler, Current N.J. Court Rules, Comment 1 to R. 4:4-4 (2012). Personal service is the primary method of service in New Jersey. R. 4:4-3 and -4. Constructive or substituted service is ineffective if the defendant is required to be personally served and is amendable to personal service. See e.g., City of Passaic v. Shennett, 390 N.J. Super. 475, 483-484. (2007); Pressler, Current N.J. Court Rules, Comment 3 to R. 4:4-4 (2012). Nonetheless, if personal service cannot be effectuated after a reasonable and good faith attempt, other methods are available. R. 4:4-3; Shennett, 390 N.J. Super. at 483. After making a good faith attempt, a plaintiff can satisfy personal jurisdiction by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, and, simultaneously, by ordinary mail. R. 4:4-4(b). This method of service is valid even if the defendant does not answer or appear, and may provide the basis for entry of default judgment. Citibank, N.A. v. Russo, 334 N.J. Super. 346, 351-52 (2000).

The Court finds the Defendant was served at her last known address of 53 Adams Avenue, Berlin, New Jersey 08029. See Certification of Counsel, Exhibit C. The Court therefore finds Defendant was properly served with personal service of the Summons and Complaint for this action on May 27, 2022. Id.

R. 4:56-1 provides that when a party has failed to "plead or otherwise defend" the clerk shall enter a default on the docket as to such party on the formal written request by the moving party. Thereafter, under R. 4:56-2(a), the clerk is directed to sign and enter judgment where the defendant is neither an infant nor incompetent and suit is for a sum certain or for a sum which can be computed and made certain by the clerk, upon the request of the plaintiff and upon an affidavit setting forth the details of the amount claimed. Douglas v. Harris, 35 N.J. 270, 276 (1961).

The Court finds that Defendant failed to answer the Complaint. As a result, The Court finds on September 15, 2022, Plaintiff filed a Request to Enter Default. See Certification of Counsel, Exhibit B. The Court further finds on September 28, default was entered against Defendant by the Clerk of Court. The Court further finds that Defendant was sent copy of the Request for Entry of Default on September 15, 2022 by regular mail at her last known address of 53 Adams Avenue, Berlin, New Jersey 08029. See Certification of Counsel, Exhibit E.

The Court finds Defendant provides no further explanation on the change of address, finds that Defendant's opposition to this motion demonstrates Defendant received notice of the motion despite the changed address, and finds that Defendant was properly served with the summons and complaint and failed to answer. Pursuant to R. 4: 6-1, the defendant shall serve an answer, including therein any counterclaim, within 35 days after service of the summons and complaint on that defendant. The Court further finds that the opposition to the entry of default

was minimal. The Court did not have an e-mail address for Defendant to notify of the virtual hearing of oral arguments for this matter. The Court made various attempts to call the Defendant to notify them of oral arguments but found that the phone number the Defendant provided by the Defendant on their opposition was not in service. The Court therefore postponed the oral argument originally listed for March 3, 2023 to March 17, 2023 at 9:00AM and informed the Defendant of such via a letter to the new home address, 2049 Barnsboro Road #Y5, Blackwood, NJ 08021, that the Defendant provided. Defendant was present for the motion hearing and requested a postponement to file a motion to vacate the default. The court granted her request and gave her a deadline of Thursday March 30 end of business to file the motion. The court indicated to her that if she failed to file the motion the court would hear plaintiffs' motion to enter judgment on Friday, March 31. Defendant failed to file a motion or any further opposition.

The Court therefore considered Defendant's proofs of Defendant's violation of the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -30. Here, Plaintiff seeks \$5,000.00 in civil penalties, \$5,076.00 in attorneys' fees reimbursement of the cost of service of the Complaint and Summons in this matter in the amount of \$80.00, and a statutory fraud surcharge in the amount of \$1,000.00 for a total judgment entered against the Defendant in the amount of \$11,156.00.

N.J.S.A. 17:33A-5(b) states that one who violates the New Jersey Insurance Fraud Protection Act is subject to civil penalties in the amount of \$5,000.00 for the first violation, \$10,000.00 for the second violation, and \$15,000.00 for each subsequent violation. The trial court is vested with the responsibility of measuring the appropriate civil penalty in a given case, these civil penalties are in no way fixed. Merin v. Maglaki, 126 N.J. 430, 439 (N.J. 1992). The imposition of a civil penalty in this case should effectuate legislative intent. "That intent is best effectuated by holding that N.J.S.A. 17:33A-4(a) supports imposition of a penalty for each false statement submitted in support of a fraudulent claim for insurance proceeds, provided that the false statement is material and significantly enhances the credibility of or evidentiary support for the claim." Id. The Court finds the amount of \$5,000.00 in civil penalties is reasonable. The Court finds two instances in which Defendant violated the Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -30. The Court finds Defendant's opposition does not dispute any of the facts. Rather, it says service went to an incorrect address. The Court finds Plaintiff had an automobile insurance policy from Progressive Garden State Insurance Company. The Court finds the policy was cancelled in December of 2018 for nonpayment. The Court finds on January 2, 2019, Defendant reinstated the policy while representing no one in her household had been involved in an automobile accident in the time lapsed since her policy had been cancelled. See Motion, Exhibit D. The Court, however, finds that on January 1, Defendant's daughter who was insured under the policy struck a deer in the insured vehicle on January 1, 2019. See Motion, Exhibit J. The Court finds on January 17, 2019 Defendant filed a claim for an accident on the vehicle falsely stating it occurred on January 15, 2019. See Motion, Exhibit D. The Court therefore finds at least two instances in which Defendant made false representations to Plaintiff. The Court therefore finds civil penalties in the amount of \$5,000.00 is reasonable.

The Court finds Plaintiffs submits proof for a total of \$10,152.50 in legal services. See Motion, Exhibit G. Plaintiff provides an hourly rate of compensation for those at the Office of the Attorney General. See Motion, Exhibit F. The Court finds the hourly rates are reasonable.

The Court further finds the timekeeping records shows the legal services provided of 2.4 hours by Nicholas Kant, Assistant Section Chief/Deputy Attorney General; 33.1 hours by Jessica Lugo, Deputy Attorney General; and 12.3 hours by Kristine Chichester, Attorney Assistant/Paralegal. The Court finds the total in legal services rendered at the provided rates is \$10,152.50. The Court further finds Plaintiff request fees for only half that amount. The Court finds the request is reasonable. N.J.S.A. § 17:33A-5(b) states the court shall also award reasonable attorney fees. The Court therefore grants the request for a judgment against Defendant including \$5,076.00 in attorneys' fees reimbursement.

Plaintiff has filed this motion for default judgment. The Court, therefore, finds that \$80 for court costs is reasonable. The Court awards the filing costs of \$80 pursuant to N.J.S.A. § 17:33A-5(b).

Finally, N.J.S.A. 17:33A-5.1 states:

In addition to any other penalty, fine or charge imposed pursuant to law, a person who is found in any legal proceeding to have committed insurance fraud shall be subject to a surcharge in the amount of \$1,000.

The Court finds Defendant to have committed insurance fraud relating to the January 1, 2019 incident. The Court therefore finds Plaintiff is entitled to the requested \$1,000.00 surcharge fee.

ORDER OF THE COURT

Therefore, the Motion to Enter Default Judgment in the amount of \$11,156.00 is GRANTED.