

FILED
April 1, 2024
Hon. Bina K. Desai, J.S.C.

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SUPERIOR COURT OF NEW JERSEY
SPECIAL CIVIL PART – MIDDLESEX COUNTY
DOCKET NO. MID-DC-006986-23

JUSTIN ZIMMERMAN, ACTING)
COMMISSIONER OF THE NEW)
JERSEY DEPARTMENT OF)
BANKING AND INSURANCE,¹)
)
Plaintiff,)
)
v.)
)
ERICA CLARK,)
)
Defendant.)

Civil Action
**ORDER FOR FINAL JUDGMENT BY
DEFAULT**
**SPECIAL CIVIL PART: STATUTORY
PENALTIES**
**AMOUNT IN CONTROVERSY:
\$14,500.00**

THIS MATTER HAVING BEEN opened to the Court on the application of Matthew J . Platkin, Attorney General of New Jersey, (by Brian R. Fitzgerald, Deputy Attorney General, appearing), attorney for Plaintiff, Justin Zimmerman, Acting Commissioner of the New Jersey Department of Banking and Insurance ("Plaintiff") on a motion for

¹ Pursuant to R. 4:34-4, the caption has been revised to reflect the current Acting Commissioner of the Department.

final judgment by default; and

Defendant, Erica Clark ("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 (i) concealing and/or knowingly failing to disclose the occurrence of an event that affected her initial or continued right or entitlement to an insurance benefit or payment, in violation of N.J.S.A. 17:33A-4(a)(3), and (ii) presenting oral statements to an insurance company in support of a claim for payment or other benefit pursuant to an insurance policy, and so a third party claim would be paid, knowing that the statements contained false information concerning material facts, in violation of N.J.S.A. 17:33A-4(a)(1).

Specifically, Defendant (i) concealed and/or knowingly failed to disclose an automobile accident to Progressive Garden State Insurance Company ("Progressive") on her application for an automobile insurance policy, which accident occurred prior to her application, in violation of N.J.S.A. 17:33A-4(a)(3), and (ii) made oral statements on two telephone calls with Progressive on May 23, 2021 in support of her automobile accident claim, falsely representing that the accident occurred after the inception of her

policy when, in fact, it occurred prior to the inception of her policy, in violation of N.J.S.A. 17:33A-4(a)(1).

FINAL JUDGMENT is on this 1st day of April, 2024, entered in the amount of \$14,500.00 against Defendant Erica Clark, and in favor of Plaintiff. This amount consists of \$10,000.00 in civil penalties for two violations of the Fraud Act, N.J.S.A. 17:33A-5(b); attorneys' fees of \$3,500.00 pursuant to N.J.S.A. 17:33A-5(b); 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 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 7 days of the date of receipt.

/s Bina K. Desai

THE HONORABLE BINA K. DESAI, J.S.C.

This motion was:

 X Opposed Unopposed

See statement of reasons attached

Statement of Reasons

Plaintiff seeks to enter default judgment by way of motion. They detail that the facts in this case demonstrate that on May 21, 2021 at 8:12 p.m., Defendant was involved in a 2 car accident involving her 2017 Nissan Maxima. Thereafter, at 8:24 p.m., Defendant applied for and obtained an automobile insurance policy through Progressive Garden State Insurance Company. The application was signed at 8:56p.m. electronically by defendant, but Defendant did not disclose the accident. On May 23, 2021, Defendant then filed a claim for the accident stating that it occurred between 9:45p.m. and 10:00p.m. The claim was later denied and the policy was subsequently cancelled on June 2, 2021 due to the false representations. Progressive indicates that had they known about the accident at the time the policy was issued, they would not have issued the same. Plaintiff's claim is for 2 violations of the New Jersey Insurance Fraud Prevention Act for concealing and/or knowingly failing to disclose the occurrence of an event that affected her right to an insurance benefit and for making oral statements to an insurance company in support of a claim knowing the statements contained false information. Plaintiff thus seeks a \$10,000 single penalty for the two violations along with costs and attorney's fees in the amount of \$3,500 pursuant to the act. They also seek imposition of a one year suspension of driving privileges pursuant to N.J.S.A. 39:6A-15, and a statutory fraud surcharge of \$1,000 pursuant to N.J.S.A. 17:33A-5.1 for a total of \$14,500 judgment against Defendant.

Defendant filed an opposition arguing she is a single parent responsible for five children and is facing financial hardships and the possibility of homelessness. She also argues she is the primary caregiver for one disable son and her disabled 70 year old mother. She argues the judgment would jeopardize her family and notes she previously filed for bankruptcy.

Plaintiff's reply argues the Defendant's opposition provides no defense to the allegations set forth in the complaint, nor denials of the same. Thus, they argue the Court disregard the Defendant's opposition.

The Court agrees that while Defendant's situation may be sympathetic, her opposition does not amount to a defense, nor is it appropriate for the Court to consider. Default was entered in this matter after Defendant was served and failed to answer. The opposition to the default judgment does not contain any denials or disputes as to the facts set forth. Based on the same, the Court is satisfied Plaintiff's two claims are supported by the facts. Defendant first falsely obtained an insurance policy less than a half hour after being in an accident, without disclosing the accident. Two days later Defendant called to report an accident alleging falsely it occurred shortly after the policy was obtained. These two distinct acts based on the timing fall within the violations alleged by Plaintiff. The Court is satisfied therefore that judgment is appropriate, and that the amounts set forth by Plaintiff are consistent with the relevant case law, and that the attorney's fees requested are reasonable. Judgment against the defendant is entered accordingly. Additionally, the Court will impose the one year license suspension as required by N.J.S.A. 39:6A-15.