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MARLENE CARIDE,
COMMISSIONER OF THE NEW
JERSEY DEPARTMENT OF
BANKING AND INSURANCE,

V.

Defendant.

GRANTED

THIS MATTER HAVING BEEN opened to the Court on the application of Matthew J. Platkin, Attorney General of New Jersey, (by Anna M. Lascurain, Deputy Attorney General, appearing), attorney for Plaintiff, Marlene Caride, Commissioner of the New Jersey Department of Banking and Insurance on a motion for Summary Judgment; and

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"), specifically N.J.S.A. 17:33A-4(a)(3), N.J.S.A. 17:33A-4(a)(4)(b), and N.J.S.A. 17:33A-4(a)(5), by falsely stating to Progressive Garden State Insurance Company ("Progressive") in a Statement of No Loss on May 14, 2021 at 12:5 2p.m., that there had been no theft to any of the vehicles listed on his policy during the policy lapse period, when in fact he had reported his previously insured vehicle stolen on May 14, 2021 at 11:00 a.m.;

FINAL JUDGMENT is on this 27th day of September, 2024, entered in the amount of \$16,000.00 against Defendant Billy Rivera and in favor of Plaintiff, Marlene Caride, Commissioner of the New Jersey Department of Banking and Insurance. This amount consists of a \$5,000.00 civil penalty for one violation of the Fraud Act, pursuant to N.J.S.A. 17:33A-5(b); attorneys' fees of \$10,000.00, 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 a copy of this Order be served upon all parties within 7 days of the date of receipt.

Kalimah H. Ahmad

The Honorable Kalimah H. ~~Ahmad~~, J.S.C.
Ahmad

GRANTED - Pursuant to the Below Statement of Reasons

This motion was:

X Opposed

 Unopposed

STATEMENT OF REASONS

The motion for summary judgment filed by Plaintiff, Marlene Caride is GRANTED pursuant to R. 4:46-2, as there is no genuine dispute of material fact.

The standard for summary judgment is set forth in Rule 4:46-2, and has been clarified by the New Jersey Supreme Court in Brill v. The Guardian Life Ins. Co. of America, 142 N.J. 520 (1995). An order for summary judgment "shall be rendered if the pleadings...show that 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." N.J. Court Rule 4:46-2(c). In Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520 (1995), the New Jersey Supreme Court held that:

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,

when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged dispute in favor of the non-moving party. *Id.* at 540. On a Motion for summary judgment, the judge's function is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial. *Brill v. Guardian Life Ins. Co. of America*, 142 N.J. 520, 540 (1995).

This motion for summary judgment was filed by Plaintiff Marle Caride, Commissioner of New Jersey Department of Banking and Insurance seeking a judgment against Defendant Billy Rivera for a violation of the New Jersey Insurance Fraud Prevention Act. In the case at hand, Defendant signed for an insurance policy with Progressive Insurance for his vehicle on October 6, 2020. After failing to make the required premium payments, Defendant was served a policy cancellation notice on April 12, 2021. Then, on April 28, 2021, Defendant's policy was terminated. On May 14, 2021, Defendant's car was stolen. Immediately after, Defendant attempted to reinstate his insurance policy for which he had to verify that there had been no damage or theft to his vehicle in between the termination of the policy and reinstatement of such. That same day, a woman purporting to be Defendant called Progressive Insurance to report the stolen vehicle.

Plaintiff argues that the above facts violate the New Jersey Insurance Fraud Prevention Act. Specifically, the Act proscribes concealing or knowingly failing to disclose the occurrence of an event which affects any person's right to entitlement to any insurance benefit. N.J.S.A. 17:33A-4(a)(3). The Act also bars claimants from making false statements to an insurance company for the purpose of obtaining an insurance policy. N.J.S.A. 17:33A-4(a)(4)(b). Defendants oppose Plaintiff's motion by claiming that there is a dispute of material fact as to

whether the Defendant signed the Statement of Loss form which verified that there had been no theft on the vehicle. The document has Defendant's name electronically typed and Defendants maintain that this is not conclusive proof that Defendant made this representation to Progressive Insurance.

In addition, they argue that this motion is untimely under R. 4:46-1 because its return date is five days prior to the case's trial date of October 2, 2024.

R. 4:46-1 states that all motions for summary judgment shall have a return date at least thirty days prior to the case's trial date. This rule, however, provides an exception for Special Civil Part cases. This deadline does not apply to Special Civil Part cases, therefore this motion is timely. Special Civil Part cases are governed by R. 6:3-3 which does not include a similar timeline.

On the merits, Defendants fail to provide a genuine dispute of material fact regarding Plaintiff's allegations. The Defendant's assertion that "anyone could have spelled the Defendant's name" does not sufficiently refute Plaintiff's claim that Defendant did in fact authenticate the Statement of Loss document. This alleged dispute of material fact is not supported by concrete evidence but is rather mere speculation. Defendant's assertions are made by their counsel and not based on facts appearing of record or judicially noticeable. There are no affidavits made on personal knowledge setting forth facts admissible in evidence. The evidence which Plaintiff has set forth conclusively shows that Defendant Billy Rivera has violated the New Jersey Insurance Fraud Prevention Act. They have shown that Defendant's was a policyholder with Progressive Insurance, that policy defaulted for nonpayment, Defendant's vehicle was stolen, and then Defendant tried to reinstate the policy to receive protection for his

stolen vehicle. In order to get his policy reinstated, Defendant misrepresented that his vehicle had not been stolen between the policy's termination and his reinstatement application, in clear violation of N.J.S.A. 17:33A-4(a)(3) and N.J.S.A. 17:33A-4(a)(4)(b).

Because this motion is timely and Defendant was in violation of the Insurance Fraud Prevention Act, Plaintiff's summary judgment motion is GRANTED and judgment shall be entered against the Defendant.