

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of Banking)
and Insurance, State of New Jersey, to fine,)
suspend and/or revoke the insurance producer)
license of Dekpah J. Gueh, Reference No.)
0197380.)

FINAL ORDER

TO: John O. Poindexter III
Law Office of John O. Poindexter III
137 High Street, 4th Floor
Mount Holly, New Jersey 08060

Dekpah J. Gueh
7 Quimby Avenue
Trenton, New Jersey 08610

THIS MATTER, having been opened by the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon issuance of Order to Show Cause E19-77 (the “OTSC”) alleging that Dekpah J. Gueh (“Gueh” or “Respondent”) may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Gueh was formerly licensed as a resident insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-32(a), until February 28, 2018 when his license expired; and

WHEREAS, Gueh is subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48 ("Producer Act"), the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1

to 11:17D-2.8, the New Jersey Insurance Prevention Act, N.J.S.A. 17:33A-1 to -30 ("Fraud Act"), and the regulations promulgated thereunder, N.J.A.C. 11:16-1.1 to -7.10; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(d), the Commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by the Producer Act and Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes against any person who is under investigation for or charged with a violation of the Producer Act of Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes even if the person's license or registration has been surrendered or has lapsed by operation of law; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(2), an insurance producer shall not violate any insurance law, regulation, subpoena or order of the Commissioner or of another state's insurance regulator; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(5), an insurance producer shall not intentionally misrepresent the terms of an actual or proposed insurance contract, policy or application for insurance; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(8), an insurance producer shall not use fraudulent, coercive or dishonest practices, or demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business in this State or elsewhere; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(10), an insurance producer shall not forge another's name to an application for insurance or to any document related to an insurance transaction; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(16), an insurance producer shall not commit any fraudulent act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(18) an insurance producer shall

not fail to notify the Commissioner within 30 days of conviction of any crime, indictment or the filing of any formal criminal charges; and

WHEREAS, pursuant to N.J.S.A. 17:22A-47(b), within thirty days of the initial pretrial hearing date, an insurance producer shall report to the Commissioner any criminal prosecution of the producer taken in any jurisdiction, which report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents; and

WHEREAS, pursuant to N.J.A.C. 11:17A-4.2, in cases where an applicant's signature is required, an insurance producer who takes an application for insurance shall be required to witness the signature of the prospective insured on the application prior to the submission of the application to the insurer only when the application is signed by the applicant after having been completed in a face to face meeting between the producer and the prospective insured; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a), the Commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license for violating the Producer Act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45(c), any person violating the Producer Act is subject to a penalty up to \$5,000.00 for the first offense and up to \$10,000.00 for each subsequent offense; additionally, the Commissioner may order restitution of moneys owed any person and reimbursement of costs of the investigation and prosecution; and

WHEREAS, pursuant to N.J.S.A. 17:33A-4(a)(4)(b), no person shall prepare or make any written or oral statement, intended to be presented to any insurance company

or producer for the purpose of obtaining 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; and

WHEREAS, pursuant to N.J.S.A. 17:33A-5(a) and (c), violations of the Fraud Act subject the violator to a civil and administrative penalty up to \$5,000.00 for the first offense, up to \$10,000.00 for the second offense and up to \$15,000.00 for each subsequent offense; moreover, the Commissioner may issue a final order recovering costs of prosecution, including attorneys' fees in accordance with N.J.A.C. 11:16-7.9(c); and

WHEREAS, pursuant to N.J.S.A. 17:33A-5.1, any person who is found in any legal proceeding to have committed insurance fraud shall be subject to a surcharge in the amount of \$1,000.00; and

WHEREAS, the OTSC issued on August 25, 2019 alleged:

COUNT 1

IT APPEARING, that at all relevant times, Respondent was employed as an insurance producer for Washington National Insurance Company ("WNIC"); and

IT FURTHER APPEARING, that on or about August 23, 2011, Respondent completed an application for a life insurance policy for individual "S.J.T." and falsely represented that S.J.T. resided in New Jersey prior to the date of the application; had a valid Social Security number; and appeared before him and signed the application in his presence on the date of the application; and

IT FURTHER APPEARING, that Respondent knew that S.J.T. did not reside in the United States, did not have a valid Social Security number, and did not appear before him and sign the application on the date of the application, and thereby caused a life insurance application containing false and misleading statements to be submitted to WNIC and a life insurance policy to be issued by WNIC to an unqualified applicant; and

IT FURTHER APPEARING, that Respondent

forged S.J.T.'s signature on the application; and

IT FURTHER APPEARING, that Respondent submitted a fraudulent life insurance policy application with a forged applicant signature to WNIC on or about August 23, 2011 for S.J.T. in violation of N.J.S.A. 17:22A-40(a)(2), (5), (8), (10) and (16), and N.J.A.C. 11:17A-4.2; and

IT FURTHER APPEARING, that in connection with the S.J.T. application, Respondent received approximately \$660.50 in commission payments from WNIC to which he was not entitled; and

COUNT 2

IT FURTHER APPEARING, Respondent prepared and presented to WNIC a fraudulent life insurance application for S.J.T., knowing that the insurance policy application and claim form contained false and misleading information concerning facts material to the insurance policy application and claim, in violation of N.J.S.A. 17:33A-4(a)(4)(b); and

COUNT 3

IT FURTHER APPEARING, that on or about August 23, 2011, Respondent completed an application for life insurance for individual, "M.B.D." and falsely represented that M.B.D. resided in New Jersey prior to the date of the application; had a valid Social Security number; and appeared before him and signed the application in his presence on the date of the application; and

IT FURTHER APPEARING, that Respondent knew that M.B.D. did not reside in the United States, did not have a valid Social Security number, and did not appear before him and sign the application on the date of the application, and thereby caused a life insurance application containing false and misleading statements to be submitted to WNIC and a life insurance policy to be issued by WNIC to an unqualified applicant; and

IT FURTHER APPEARING, that Respondent forged M.B.D.'s signature on the application; and

IT FURTHER APPEARING, that Respondent

submitted a fraudulent life insurance policy application with a forged applicant signature to WNIC on or about August 23, 2011 for M.B.D. in violation of N.J.S.A. 17:22A-40(a)(2), (5), (8), (10) and (16), and N.J.A.C. 11:17A-4.2; and

IT FURTHER APPEARING, that in connection with the M.B.D. application, Respondent received approximately \$649.08 in commission payments from WNIC to which he was not entitled; and

COUNT 4

IT FURTHER APPEARING, Respondent prepared and presented to WNIC a fraudulent life insurance application for M.B.D., knowing that the insurance policy application and claim form contained false and misleading information concerning facts material to the insurance policy application and claim, in violation of N.J.S.A. 17:33A-4(a)(4)(b); and

COUNT 5

IT FURTHER APPEARING, that on or about September 2, 2011, Respondent completed an application for a life insurance policy for individual "S.T." and falsely represented that S.T. resided in New Jersey prior to the date of the application; had a valid Social Security number; and appeared before him and signed the application in his presence on the date of the application; and

IT FURTHER APPEARING, that Respondent knew that S.T. did not reside in the United States, did not have a valid Social Security number, and did not appear before him and sign the application on the date of the application, and thereby caused a life insurance application containing false and misleading statements to be submitted to WNIC and a life insurance policy to be issued by WNIC to an unqualified applicant; and

IT FURTHER APPEARING, that Respondent forged S.T.'s signature on the application; and

IT FURTHER APPEARING, that Respondent submitted a fraudulent life insurance policy application with a forged applicant signature to WNIC on or about September 6, 2011 for S.T. in violation of N.J.S.A. 17:22A-40(a)(2), (5), (8), (10) and (16), and N.J.A.C.

11:17A-4.2; and

IT FURTHER APPEARING, that in connection with the S.T. application, Respondent received approximately \$847.25 in commission payments from WNIC to which he was not entitled; and

COUNT 6

IT FURTHER APPEARING, Respondent prepared and presented to WNIC a fraudulent life insurance application for S.T., knowing that the insurance policy application and claim form contained false and misleading information concerning facts material to the insurance policy application and claim, in violation of N.J.S.A. 17:33A-4(a)(4)(b); and

COUNT 7

IT FURTHER APPEARING, that on August 17, 2016, Respondent was indicted by a Grand Jury for second degree Insurance Fraud and Theft by Deception in the third degree; and

IT FURTHER APPEARING, that on June 19, 2017, Respondent was enrolled in the Pre- Trial Intervention Program for a period of thirty-six (36) months; and

IT FURTHER APPEARING, that Respondent failed to advise the Commissioner of the indictment within 30 days, in violation of N.J.S.A. 17:22A-40(a)(18) and N.J.S.A. 17:22A-47(b);

IT FURTHER APPEARING that Gueh was given notice of the aforesaid charges and an opportunity to contest the charges at a hearing pursuant to the OTSC; and

IT FURTHER APPEARING that as set forth in the Certification of Jessica Lugo, attached as Exhibit A, under cover letter dated September 5, 2019, the OTSC was sent by certified and regular mail to the last known two (2) residential addresses of Gueh at 229 South Walter Avenue, Trenton, New Jersey 08629 and 7 Quimby Avenue, Trenton, New Jersey 088610; and

IT FURTHER APPEARING that Gueh answered the OTSC on September 24, 2019 and

requested a hearing; and

IT FURTHER APPEARING that the matter was transmitted to the Office of Administrative Law (“OAL”) for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13; and

IT FURTHER APPEARING that Gueh retained counsel to represent him for this matter; and

IT FURTHER APPEARING that on March 13, 2020, Gueh filed a motion to stay proceedings before the OAL, pending the resolution of criminal charges against him related to the conduct alleged in the OTSC. That motion was subsequently withdrawn by Respondent during a status conference on June 4, 2020, because he had completed pre-trial intervention and the criminal charges were dismissed; and

IT FURTHER APPEARING that during a telephonic status conference attended by counsel for both parties on July 15, 2021, counsel for Respondent indicated that he was having a difficult time obtaining certain information responsive to the Department’s discovery requests; and

IT FURTHER APPEARING that a new telephonic status conference was scheduled with the parties for September 13, 2021. Counsel for both parties were informed that Respondent was required to participate in the September 13, 2021 call along with counsel, because the issues in obtaining information from Respondent were delaying the completion of discovery; and

IT FURTHER APPEARING that the OAL provided written notice to both Respondent and his counsel of the conference via email on July 26, 2021. The notice specifically instructed that Respondent was required to participate, and that his failure to do so would result in the case being dismissed and transmitted back to the Department for appropriate handling. Counsel for both the petitioner and Respondent attended the September 13, 2021 status conference; however, Respondent failed to attend; and

IT FURTHER APPEARING that following Respondent's failure to appear, the OAL did not take any action for one day, to give Respondent the opportunity to provide an explanation for his non-appearance, pursuant to N.J.A.C. 1:1-14.4; and

IT FURTHER APPEARING that after receiving no explanation or other communication from Respondent or Respondent's attorney regarding Respondent's failure to appear at the scheduled conference as of September 15, 2021, the ALJ issued the Initial Decision ordering that the case be returned to the Department, pursuant to N.J.A.C 1:1-3.3(b) and (c). In the Initial Decision, the ALJ concluded that because the Department, as the appearing party, did not request permission to present ex parte proofs, N.J.A.C. 1:1-14.4 mandates that the case be returned to the Department for appropriate disposition; and

IT FURTHER APPEARING that neither party filed any exceptions to the Initial Decision; and

IT FURTHER APPEARING that the record does not include any written explanation from Respondent or his counsel regarding Respondent's failure to appear at the scheduled status conference, nor any other filing requesting that the matter be rescheduled for hearing; and

IT FURTHER APPEARING that Order No. E22-05 was issued by the Commissioner deeming that Respondent's request for a hearing be deemed withdrawn and dismissed; and

IT FURTHER APPEARING that in Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987), the Supreme Court established factors in order to evaluate the imposition of fines in administrative proceedings. Here, the factors are applied as follows. Under factor one, Respondent showed bad faith by attempting to defraud WNIC and gain commissions for the fraudulent applications he submitted. Under factor two, ability to pay is considered. According to Respondent's Answer, he is not working, receives Social Security income and has exhausted his funds in defending the criminal case filed against him. However, no documentation supporting

Respondent's claims of financial hardship has been submitted for consideration. Under factor three, Respondent profited by taking commissions in the amount of \$2,156.83 to which he was not entitled. Under factor four, there was injury to the public because Respondent obtained commissions from an insurance company that would otherwise be used for legitimate purposes. Also, Respondent's defrauding WNIC out of commission money caused WNIC and the State to exert time and money to investigate his actions, and damages the reputation of insurance producers and the business of insurance in the eyes of the public. Under the fifth factor, there is evidence that the duration of Respondent's misconduct encompassed a two-month period. Under the sixth factor, Respondent was criminally charged and convicted for his conduct. Under factor seven, there appears to be no past violations for Respondent of the Fraud Act or Producer Act. Five of the factors support a higher penalty, one factor is neutral and one factor supports a lower penalty; and

NOW, THEREFORE, IT IS on this 21st day of June, 2022,

ORDERED, that the charges contained in the OTSC are deemed admitted by Gueh due to his failure to appear as required by the OAL, pursuant to N.J.A.C.11:17D-2.1(b)(1); and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-40, and N.J.A.C. 11:17D-2.1(b)2, the insurance producer license of Gueh is **REVOKED** effective upon the execution of this Final Order, and

IT IS FURTHER ORDERED, that Gueh shall be responsible for the payment of sixty five thousand dollars (\$65,000) in civil penalties for violations of the Producer Act, Fraud Act, and other insurance law cited above as follows:

Gueh shall be responsible for the payment of civil penalties totaling thirty five thousand dollars (\$35,000) for the Producer Act violations described in Counts 1, 3, 5, and 7 of the OTSC; and Gueh shall be responsible for the payment of civil penalties totaling thirty thousand dollars

(\$30,000) for the Fraud Act violations described in Counts 2, 4, and 6 of the OTSC; and

Gueh shall be responsible for the payment of \$2,156.83 in restitution to WNIC as ordered by the court as a condition of his Pre-Trial Intervention; and

IT IS FURTHER ORDERED that pursuant to N.J.S.A. 17:22-45c and N.J.A.C. 11:1-32.4(b)20, Gueh shall reimburse the Department of Banking & Insurance, Division of Insurance, Enforcement for the costs associated with the investigation and prosecution of this matter, as evidenced by the Certification of Costs by Investigator Gowen, (attached as Exhibit B), totaling four hundred fifteen dollars (\$415). The Commissioner has reviewed the investigative costs application and finds the amount of time to be reasonable, and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:33A-5c, Gueh shall reimburse the Department of Banking and Insurance, Bureau of Fraud Deterrence, for the attorneys' fees associated with the investigation and prosecution of this matter, as evidenced by the Certification of Jessica Lugo, totaling fourteen thousand five hundred dollars (\$14,500). The Commissioner has reviewed the attorneys' fees application and finds the amount of time to be reasonable; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:33A-5.1, Gueh shall pay the Department of Banking and Insurance, Bureau of Fraud Deterrence, a statutory fraud surcharge in the amount of one thousand dollars (\$1,000); and

IT IS FURTHER ORDERED, that Gueh shall pay the above fines and costs totaling eighty thousand nine hundred fifteen (\$80,915) by remitting full payment to the Commissioner of Banking and Insurance, State of New Jersey, 20 West State Street, P.O. Box 329, Trenton, New Jersey 08625, Attention: Virgil Downtin, Chief of Investigations by certified check, cashier's check or money order made payable to the "State of New Jersey, General Treasury," within ten (10) days from the date of service of this Order; and

IT IS FURTHER ORDERED, that in the event full payment of the fines and costs is not

made, the Commissioner may exercise any and all remedies available by law, including but not limited to recovery of any unpaid penalties, in accordance with the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 to -12; and

IT IS FURTHER ORDERED, that the fines in this Final Order are imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of the public health, safety and welfare, and are not intended to constitute debts which may be limited or discharged in a bankruptcy proceeding; and

IT IS FURTHER ORDERED, that the provisions of this Final Order represent a final agency decision and constitute a final resolution of the allegations contained in the OTSC.



Marlene Caride
Commissioner