

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

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Proceedings by the Commissioner of)	FINAL ORDER
Banking and Insurance, State of New Jersey,)	
to fine, suspend and/or revoke the insurance)	
producer license of Anthony M.)	
Zappaunbulso d/b/a Atlantic Coast Insurance)	
Center, Reference No. 9365173.)	

TO: Anthony M. Zappaunbulso
123 E. Morning Glory Road
Wildwood Crest, New Jersey 08260

This matter, having been opened by the Commissioner of Banking and Insurance, State of New Jersey (“Commissioner”), upon information that Anthony M. Zappaunbulso d/b/a Atlantic Coast Insurance Center (“Zappaunbulso” or “Respondent”) may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, on or about December 9, 1993 Respondent was initially licensed as a resident insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-32(a), which license expired on July 31, 2021; and

WHEREAS, Respondent 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 Producer Licensing regulations promulgated thereunder, N.J.A.C. 11:17-1.1 to -2.17, and the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 to 11:17D-2.8; 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 or Title 17 of the Revised Statutes of 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)(4), an insurance producer shall not improperly withhold, misappropriate or convert any monies or properties received in the course of doing insurance business; 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)(16), an insurance producer shall not commit any fraudulent act; and

WHEREAS, pursuant to N.J.A.C 11:17C-2.1(a), all premium funds shall be held by an insurance producer in a fiduciary capacity and shall not be misappropriated, improperly converted to the insurance producer's own use, or illegally withheld by the licensee; and

WHEREAS, pursuant to N.J.A.C 11:17C-2.1(b), all premium funds shall be segregated and not in any manner commingled with any other funds of the insurance producer, except as may be permitted otherwise by law; and

WHEREAS, pursuant to N.J.A.C 11:17C-2.2(a), all premium funds shall be remitted to the insurer or other insurance producer, as applicable, within five business days after receipt of the funds except as otherwise required or provided by law; and

WHEREAS, pursuant to N.J.A.C 11:17C-2.3(a)(1), an insurance producer shall establish and maintain a trust account into which shall be deposited cash, checks and other instruments payable to the insurance producer when an insurance producer holds any premiums for more than five business days; and

WHEREAS, pursuant to N.J.A.C 11:17C-2.3(b), an insurance producer shall establish and maintain an account which shall be designated a “Trust Account” on the bank records and those words shall be displayed on the face of the checks on that account; and

WHEREAS, pursuant to N.J.A.C 11:17A-4.10, an insurance producer acts in a fiduciary capacity in the conduct of his or her insurance business; 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 or may levy a civil penalty 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 of 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, the Commissioner issued Order to Show Cause No. E22-37 on May 2, 2022, alleging violations of the Producer Act by Zappaunbulso as follows:

FACTS COMMONS TO ALL COUNTS

IT APPEARING, that at all relevant times, Respondent was a licensed insurance producer in the State of New Jersey and an

appointed agent for American Equity Investment Life Insurance Company (“American Equity”), and conducted his insurance business under the trade name Atlantic Coast Insurance Center (“Atlantic Coast”); and

IT FURTHER APPEARING, that on or about January 28, 2019, Zappaunbulso deposited into the business checking account of Atlantic Coast a check from his client, “A.B.,” in the amount of \$5,000 to pay the premium to purchase an “Asset Shield 10” annuity from American Equity; and

IT FURTHER APPEARING, that on February 8, 2019, an application was executed by A.B. as the “Owner” and Zappaunbulso as the “Primary Licensed Agent” for the purchase of an “Asset Shield 10” annuity from American Equity, which application indicated that a check for \$5,000 to pay the annuity premium was enclosed therewith; and

IT FURTHER APPEARING, that on or about March 5, 2019, Zappaunbulso submitted the executed “Asset Shield 10” annuity application to American Equity, but failed to remit the \$5,000 premium payment that was required under the terms of said application; and

IT FURTHER APPEARING, that on or about March 6, 2019, American Equity notified Zappaunbulso that the submitted “Asset Shield 10” annuity application was rejected for non-compliance with the annuity’s terms and conditions in that, amongst other things, Respondent failed to remit the required \$5,000 premium payment; and

IT FURTHER APPEARING, that despite having been notified of deficiencies in A.B.’s annuity application, Zappaunbulso never corrected said deficiencies and never remitted the \$5,000 annuity premium to American Equity; and

IT FURTHER APPEARING, that on or about July 9, 2019, in an attempt to reimburse his client for the annuity premium payment he had received, Zappaunbulso remitted to A.B. a check drawn on the business checking account of Atlantic Coast (Check No. 137) in the amount of \$5,000, however said check was non-negotiable and invalid because said bank account had “insufficient funds” at the time of deposit by A.B.; and

IT FURTHER APPEARING, that in July and August 2019, Zappaunbulso remitted to A.B. three checks drawn on his personal

bank accounts totaling \$5,000, which checks were issued on the following dates and in the following amounts: \$4,000 on July 24th; \$900 on August 1st; and \$100 on August 5th; and

IT FURTHER APPEARING, that effective on or about August 8, 2019, American Equity terminated its agency agreement with Zappaunbulso “For Cause” based upon Respondent having misappropriated his client’s insurance premium and for other violations of his agency agreement; and

COUNT ONE

IT FURTHER APPEARING, that Respondent received a \$5,000 insurance premium payment from A.B. and failed to remit same to the insurance carrier within five (5) days after receipt, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (8) and (16) and N.J.A.C 11:17C-2.2(a); and

COUNT TWO

IT FURTHER APPEARING, that Respondent misappropriated and converted the \$5,000 insurance premium payment received from A.B. by depositing same in the business checking account for Atlantic Coast and thereafter using said funds for the benefit of himself and/or Atlantic Coast, thereby engaging in fraudulent and deceitful conduct in the course of doing insurance business, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (8) and (16), N.J.A.C 11:17C-2.1(a) and (b) and N.J.A.C 11:17A-4.10; and

COUNT THREE

IT FURTHER APPEARING, that in connection with its investigation of Respondent’s insurance transaction involving A.B., the Department requested and received from Respondent copies of the books, accounts and records of Atlantic Coast; and

IT FURTHER APPEARING, that upon reviewing the books, accounts and records of Atlantic Coast, the Department determined that Respondent had failed to establish and maintain a segregated bank account designated as a “Trust Account” for the deposit of cash and checks remitted by clients to pay insurance premiums, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (8) and (16) and N.J.A.C 11:17C-2.3(a) and (b); and

COUNT FOUR

IT FURTHER APPEARING, that Respondent failed to maintain deposited funds in the business checking account for Atlantic Coast sufficient to satisfy Check No. 137 issued to A.B., thereby demonstrating incompetence, untrustworthiness and/or financial irresponsibility in the conduct his insurance business, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (8) and (16) and N.J.A.C 11:17A-4.10; and

IT FURTHER APPEARING, that as set forth in the certification of Dakar Ross (“Ross Cert.)(Exhibit B), Zappaunbulso was given notice of the aforesaid charges and an opportunity to contest the charges at a hearing pursuant to Order to Show Cause E22-37, which was duly served on Zappaunbulso by certified mail, RRR, and regular mail sent to the address listed on this Final Order in accordance with N.J.A.C. 11:17D-2.1(a)(3); and

IT FURTHER APPEARING, that as set forth in Ross Cert., Respondent initially filed an answer to the OTSC and requested a hearing, and thereafter, on February 7, 2023, Respondent voluntarily withdrew his answer and decided not to contest the OTSC and, on February 13, 2023, the OAL transmitted the matter back to the Department given Respondent had withdrawn his request for a hearing and waived his rights to a hearing, and the violations in the OTSC were therefore deemed admitted, pursuant to N.J.A.C. 11:17D-2.1(b)(1); and

IT FURTHER APPEARING, that in Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987), the Supreme Court established seven factors to be considered in determining the imposition of civil fines in administrative proceedings (“Kimmelman Factors”); and

IT FURTHER APPEARING, that the seven Kimmelman Factors are as follows: (1) the good or bad faith of the defendant; (2) defendant’s ability to pay a civil fine; (3) the amount of profits obtained from the illegal activity; (4) the injury to the public; (5) the duration of the

misconduct; (6) the existence of criminal or treble damages actions; and (7) the past violations of defendant; and

IT FURTHER APPEARING, that the Kimmelman Factors apply to this matter as follows:

(1) Respondent showed bad faith by engaging in multiple violations: failing to remit insurance premium; misappropriation of premium; and failing to maintain separate business and trust accounts; and failing to any account records; (2) Respondent has not provided any evidence of his inability to pay a civil fine; (3) Respondent profited by misappropriating \$5,000; (4) there was injury to the public by Respondent's misappropriation of client's funds; (5) Respondent's violations were committed over a period of eight months; (6) no criminal or treble damages actions have been filed against Respondent regarding his illegal activity; and (7) Respondent has no prior violations; and

NOW, THEREFORE, IT IS on this 5 day of October, 2023,

ORDERED, that the charges contained in Counts One, Two, Three and Four of Order to Show Cause E22-37 are deemed admitted by Zappaunbulso, 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 expired resident insurance producer license of Anthony M. Zappaunbulso is hereby **REVOKED** effective upon the execution of this Final Order by the Commissioner; and

IT IS FURTHER ORDERED, that Zappaunbulso shall be responsible for the payment totaling \$17,500.00 in civil penalties for the four violations of the Producer Act as described above, which the Acting Commissioner finds to be the appropriate amount based on a weighing of the Kimmelman factors as described above; and :

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c), Zappaunbulso shall reimburse the Department of Banking and Insurance, Division of Insurance Enforcement and Bureau of Fraud Deterrence, for the costs associated with the investigation and prosecution of this matter, as evidenced by the Certification of Costs by Investigator Matthew C. Gervasio (Exhibit A), totaling \$875.00. The Commissioner has reviewed the investigative costs application and finds the amount of time to be reasonable; and

IT IS FURTHER ORDERED, that Zappaunbulso shall pay the above penalties and costs totaling \$18,375.00 to the Commissioner of Banking and Insurance, State of New Jersey, 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 days from the date of service of this Order; and

IT IS FURTHER ORDERED, that in the event full payment of the penalty 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, with post-judgment interest, in accordance with the Penalty Enforcement Law, N.J.S.A. 2A:58-10 to -12; and

IT IS FURTHER ORDERED, that the civil penalty in this Final Order is 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 is 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 Order to Show Cause No. E22-37.

A handwritten signature in black ink that reads "Justin Zimmerman". The signature is written in a cursive style with a long horizontal flourish at the end.

Justin Zimmerman
Acting Commissioner