STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DKT. NO.: BKI 03589-22
AGENCY DOCKET NO. E22-30

JUSTIN ZIMMERMAN,[1] ACTING COMMISSIONER, Petitioner,	)	
v.	)	FINAL DECISION AND ORDER
ROBERT W. MANIA, HEIDI ANN MANIA, AND RHM BENEFITS, INC., Respondents.	)	

This matter comes before the Acting Commissioner of Banking and Insurance ("Commissioner") pursuant to the authority of the New Jersey Insurance Producer Licensing Act at N.J.S.A. 17:22A-26 to -48 ("Producer Act"), and all powers expressed or implied therein, for the purposes of reviewing the January 8, 2024 Initial Decision ("Initial Decision") of Administrative Law Judge Hon. Tricia M. Caliguire ("ALJ").

In the Initial Decision, the ALJ granted the Department of Banking and Insurance's ("Department") motion for Summary Decision against Respondents Robert W. Mania ("Robert"), Heidi Ann Mania ("Heidi")[2], and RHM Benefits, Inc. ("RHM") (collectively, "Respondents") on Counts One through Four, as alleged in Order to Show Cause No. E22-30 ("OTSC"). Additionally, the ALJ recommended that the Respondents' insurance producer licenses be revoked, and that civil

[1] Pursuant to R. 4:34-4, Acting Commissioner Justin Zimmerman has been substituted in place of former Commissioner Marlene Caride in the caption.

[2] Since both Respondents share the last name Mania, they will be referred to in this Final Decision and Order by their first names.

penalties in the amount of $20,000 be imposed against the Respondents. Further, the ALJ recommended that the Respondents shall reimburse the Department $1,612.50 for the costs of investigation and prosecution pursuant to N.J.S.A. 17:22A-45(c).

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On April 7, 2022, the Department issued the OTSC against the Respondents. The OTSC contains four Counts as follows:

> Count One: Robert failed to notify the Commissioner of the criminal prosecutions against him within thirty (30) days, in violation of N.J.S.A. 17:22A- 40(a)(18) and N.J.S.A. 17:22A-47;
>
> Count Two: Robert pleaded guilty to and was convicted of Mail Fraud, a felony, and failed to notify the Commissioner within thirty (30) days of the conviction of Mail Fraud, in violation of N.J.S.A. 17:22A-40(a)(2), (6), (7), (8), and (16), and further, following his conviction of a felony in the fourth degree or higher, failed to obtain a waiver from the Commissioner to be employed in the business of insurance in this State as required by N.J.A.C. 11:17E-1.3 and 18 U.S.C. § 1033(e)(2);
>
> Count Three: By engaging in and admitting to the scheme to defraud the Mount Olive Township School District, for which Robert pled guilty and was convicted of Mail Fraud, a class 3 felony, and which scheme was conducted through RHM, Robert and RHM violated N.J.S.A. 17:22A- 40(a)(2), (4), (6), (7), (8), and (16); and during the timeframe Robert and RHM engaged in the aforementioned scheme, Heidi was an active officer and a Designated Responsible Licensed Producer ("DRLP") of RHM, and therefore individually responsible for the insurance-related conduct of RHM, pursuant to N.J.A.C. 11:1-12.2, and therefore additionally liable for the violations of N.J.S.A. 17:22A-40(a)(2), (4), (6), (7), (8), and (16); and
>
> Count Four: By failing to report Robert's criminal prosecution on RHM's April 25, 2016 application to renew its producer license, Respondents violated N.J.S.A. 17:22A-40(a)(1), (2), (4), (8), and (16) and N.J.S.A. 17:22A-47(b).

On April 16, 2022, the Respondents filed an Answer to the OTSC, wherein the Respondents denied all of the allegations set forth in the OTSC and requested a hearing. Initial Decision at 2. The Department transmitted the matter as a contested case to the Office of

Administrative Law ("OAL") pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, where it was filed on May 4, 2022. Ibid.

The parties engaged in settlement discussions which were unsuccessful, and they filed motions and cross-motions for summary decision. Id. at 2-3. The record was closed on November 22, 2023 and the ALJ granted summary decision to the Department on January 8, 2024. Id. at 3.

ALJ'S FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS

The ALJ's Factual and Legal Findings

The ALJ noted that summary decision may be granted if "the papers and discovery which have been filed, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Initial Decision at 8 (citing N.J.A.C. 1:1-12.5(b)).

The ALJ stated that a motion for summary decision may only be granted where the moving party sustains the burden of proving "the absence of a genuine issue of material fact," and all inferences of doubt are drawn against the movant. Ibid. (quoting Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 74–75 (1954)). If the opposing party offers only facts which are immaterial or insubstantial in nature, these circumstances should not defeat a motion for summary judgment. Ibid. Although the pleadings may raise a factual issue, the question before the judge is whether those facts are "material" to the legal issues to be tried. Ibid. The ALJ found that there were no material facts in dispute, only questions of law. Id. at 9. Accordingly, the ALJ concluded that Summary Decision was appropriate. Ibid.

The ALJ found the following relevant facts in granting the Department's Motion for Summary Decision.

Facts Relevant to All Counts

The ALJ found that Robert was licensed as a resident insurance producer from July 23, 2003 to September 30, 2017 when his license expired. Id. at 3. Heidi has been licensed as a resident insurance producer since June 26, 1996. Ibid. RHM was formed by Robert and Heidi on March 15, 2005. Ibid. It was licensed as a resident insurance producer from May 10, 2006 until May 31, 2018, when its license expired. Id. at 3-4. Robert and Heidi were its DRLPs. Id. at 4. No record of Heidi or Robert removing themselves as DRLP was produced. Ibid. at FN4.

From March 15, 2005 to July 1, 2012, Heidi owned 51 percent of RHM, provided administrative support to RHM, had access to its business records and accounts, and received compensation from RHM. Ibid. During this period, Robert owned 49 percent of RHM. Ibid. Heidi and Robert shared a personal checking account. Ibid.

The ALJ found that Robert was an elected member of the Mount Olive School District Board of Education ("MOBOE") and between 2007-2009, he participated in a scheme to increase the brokerage commissions for MOBOE's account and divert them to himself via RHM. Ibid. Robert used his position on the MOBOE to intercept annual disclosures to the MOBOE from the insurance provider that detailed the rate increases and payments. Ibid. Between October 2007 and June 2009, Robert received approximately 21 commission checks totaling $141,527 related to the MOBOE insurance account. Ibid.

Heidi was aware of the scheme by September 2011. Id. at 5. On June 30, 2012, Robert resigned as owner, partner, officer, director, or member of RHM and on July 1, 2012, he transferred his shares of RHM to Heidi, making her the sole owner of RHM. Ibid.

On July 2, 2012, Robert entered into a plea agreement with the United States Department of Justice ("DOJ") in which he agreed to plead guilty to a one count information which charged

him with participating in a scheme to defraud the MOBOE in violation of 18 U.S.C. §§ 1341 and 2. Ibid. Although the plea was to be confidential, the DOJ could bring the agreement to the attention of other prosecuting offices, if requested. Ibid.

The ALJ found that Heidi and Robert never informed the Department of the scheme or plea agreement. Id. at 6.

On April 21, 2016, Robert pled guilty to mail fraud in violation of 18 U.S.C. §§ 1341 and 2 and was formally charged by the U.S. Attorney for the District Court of New Jersey. Id. at 4, 7. At his plea hearing, he admitted that he participated in this scheme, and received over $370,000 during its course. Id. at 4.

On April 25, 2017, Robert was convicted of mail fraud and sentenced to three months imprisonment, a fine of $3,000, a special assessment of $100, and was ordered to pay restitution to the MOBOE and the Morris County Counsel[3] in the amount of $403,912. Id. at 7-8.

Count One

The ALJ stated that the Department alleged in Count One of the OTSC that Robert failed to report to the Commissioner within 30 days of entering into the plea agreement in violation of N.J.S.A. 17:22A-40(a)(18) and N.J.S.A. 17:22A-47(b). Id. at 10-11.

The ALJ found that Robert entered into a plea agreement for his participation in the scheme to defraud the MOBOE and that he did not notify the Commissioner regarding the plea agreement until April 2016, four years later. Id. at 11. Formal charges were filed against Robert on April 21, 2016, and on April 25, 2017, he was convicted and sentenced. Ibid.

[3] The ALJ notes that this was for "a separate scheme" but provides no more detail. Initial Decision at 8. Further, no additional detail is given in the record. The JOC indicates that $141,527 in restitution is to be paid to the MOBOE and $262,385 in restitution is to be paid to the Morris County Counsel.

The ALJ found that N.J.S.A. 17:22A-40(a)(18) and N.J.S.A. 17:22A-47(b) obligated Robert to notify the Commissioner within 30 days of being indicted, the filing of charges, a pretrial hearing, or being convicted. Ibid. Robert gave notice to the Commissioner within 30 days of charges being filed against him, and it appeared that there was not a pretrial hearing. Ibid. The Department argues that the plea agreement functions as a "de facto indictment" and the four-year delay between the plea agreement, which was the beginning of criminal proceedings, and Robert's notice to the Commissioner, violated the 30-day notice requirement. Ibid.

The ALJ found that an indictment must "set forth the elements of the offense charged and contain a statement of the facts and circumstances that will inform the accused of the elements of the specific offense." Id. at 12 (quoting 24 Moore's Federal Practice – Criminal Procedure § 607.04). The plea agreement that Robert entered into included a description of the underlying facts. Ibid.

The ALJ concluded that Robert had the obligation to notify the Commissioner when he became aware of the charges that would be filed against him, not simply when formal charges were filed. Ibid. Accordingly, the ALJ found that Robert was required to notify the Commissioner within 30 days of executing the plea agreement and the Department proved the allegations in Count One of the OTSC by a preponderance of the credible evidence. Ibid.

Count Two

The ALJ stated that the Department alleged in Count Two of the OTSC that Robert continued to work in the insurance industry after having been convicted of a felony involving breach of trust or dishonesty without first obtaining a waiver from the Commissioner in violation of N.J.S.A. 17:22A-40(a)(2), (6), and (7), and N.J.A.C. 11:17E-1.3(a). Id. at 13-14.

The ALJ found that Robert pled guilty and was convicted of mail fraud in violation of 18

U.S.C. §1341, which is a felony of the fourth degree or higher involving breach of trust or dishonesty. Id. at 14. Accordingly, the ALJ concluded that the Department proved that Robert violated N.J.S.A. 17:22A-40(a)(6) and (7) by a preponderance of the credible evidence. Ibid.

The ALJ also found that Robert did not apply for or obtain a waiver from the Commissioner and he continued to be licensed to work in the insurance industry from the date of the plea and cooperation agreements until October 2017, when his license renewal application was denied. Ibid. Accordingly, the ALJ found that the Department proved by a preponderance of the credible evidence that Robert violated N.J.A.C. 11:17E-1.3(a) and N.J.S.A. 17:22A-40(a)(2). Id. at 15.

Count Three

The ALJ stated that the Department alleged in Count Three of the OTSC that Robert and RHM participated in a scheme to defraud the MOBOE of more than $400,000 by fraudulently overstating insurance commissions in violation of N.J.S.A. 17:22A-40(a)(2), (4), (6), (7), (8), and (16). Ibid. Heidi is also liable for these violations because she was a DRLP for RHM. Id. at 16.

The ALJ found that between October 2007 and June 2009 Robert was involved in a scheme to overstate insurance commissions and prevent disclosure of the inflated commissions to the insured. Id. at 15. There is also no dispute that because of the scheme, Robert received payments and distributed inflated commissions, and he and RHM received approximately twenty-one commission checks totaling $141,527. Id. at 16.

The ALJ summarized the parties' arguments. The Respondents argued that this Count was precluded by the statute of limitations because the OTSC was issued more than ten years after the underlying events took place, which was between 2007 and 2009. Id. at 20 (citing N.J.S.A. 2A:14-1.2(a)). The Department argues that the ten-year statute of limitations applies, but, under the discovery rule, the statutory period would not begin to run until the violations were discovered in

2016, shortly after the charges against Robert were filed. Ibid.

The ALJ stated that the purpose of the discovery rule is to prevent the unjust results that may arise from a rigid application of the statute of limitations "whenever equity and justice have seemed to call for its application." Ibid. (quoting Lopez v. Swyer, 62 N.J. 267, 273 (1973)). However, in some cases it may be "unjust . . . to compel a person to defend a lawsuit long after the alleged injury has occurred." Ibid. Accordingly, "the equitable claims of opposing parties must be identified, evaluated and weighed." Ibid. Ultimately, however, it is the burden of the party asserting the rule to establish that it is applicable. Ibid. (citing Vispisiano v. Ashland Chem. Co., 107 N.J. 416, 432 (1987)).

The ALJ determined that the Department first had knowledge of the facts underlying the charges in the OTSC on April 28, 2016, when Robert's counsel sent notice to the Commissioner of the entry of charges against him. Id. at 22. The ALJ applied the discovery rule and concluded that Count Three is not barred by the statute of limitations. Ibid.

The Respondents also argued that Count Three is barred by the doctrine of laches, which "precludes relief when there is an 'unexplainable and inexcusable' delay in exercising a right, which result in prejudice to another party." Ibid. (quoting Fox v. Millman, 210 N.J. 401, 417 (2012)). The ALJ found that although laches is generally inapplicable when there is a statute of limitations, the application of laches "to shorten an otherwise permissible period for initiation of litigation" would result in "only the rarest of circumstances [with] only overwhelming equitable concerns[.]" Id. at 22-23 (quoting Millman, 201 N.J. at 422). Such rare circumstances may occur if the moving party has unreasonably delayed and the delay has prejudiced the other party. Id. at 23. The party asserting laches has the onus to show that they have been prejudiced by the unreasonable delay. Ibid. This burden is particularly high where the movant seeks to assert laches

against a government entity carrying out an essential governmental function in the interest of the public. Ibid. (citing Town of Secaucus v. City of Jersey City, 19 N.J. Tax 10, 27 (2000)).

The Respondents argue that they have been prejudiced by Robert's inability to resume work in the insurance industry since 2017, when his renewal application was denied and the associated loss of income, and the potential for evidence to have grown stale or disappear in the six years between when the Department was notified of Robert's conduct and the date the OTSC was issued. Ibid.

The ALJ found that while Robert has been unable to work in insurance since 2017, had he notified the Commissioner of the plea agreement in a timely manner, he may have lost his license even earlier. Ibid. Further, Heidi has continued to work in the industry, so the delay in the OTSC seeking to revoke her license has been a benefit to the family. Ibid. Lastly, the Respondents have not indicated what evidence was lost and both parties moved for summary decision on the grounds that there is no dispute over material facts. Ibid.

The ALJ concluded that the Department proved by a preponderance of the credible evidence that Robert and RHM participated in the scheme to fraudulently overstate insurance commissions in violation of N.J.S.A. 17:22A-40(a)(2), (4), (6), (7), (8) and (16). Id. at 16.

The Department further alleges in Count Three that Heidi, as DRLP for RHM, is personally liable for all the violations pursuant to N.J.A.C. 11:1-12.2(a), which provides that "[a]ctive officers shall be held individually responsible for all insurance related conduct of the corporate licensee." Ibid.

The ALJ found that from October 2007 to June 2009 when RHM was receiving commission checks from Robert's scheme, Heidi was the DRLP for RHM. Ibid. The ALJ further found that she held a 49 percent ownership interest in RHM between October 2007 and June 2009,

when Robert and RHM received twenty-one commission checks as a result of their scheme to overcharge the MOBOE. Id. at 17. Even though Heidi was employed elsewhere, she was paid by RHM and had access to its business records and bank accounts. Ibid. The ALJ concluded that Heidi is personally responsible for RHM's actions, including the violations in Count Three, while she held an ownership interest of more than ten percent pursuant to N.J.A.C. 11:17A-1.6(c).

Count Four

The ALJ stated that the Department alleged in Count Four of the OTSC that the Respondents submitted applications to renew their producer licenses and did not disclose that Robert was being prosecuted in violation of N.J.S.A. 17:22A-40(a)(1). Id. at 17-18.

The ALJ found that on June 1, 2012, Robert completed an application for license renewal on behalf of RHM, in which he answered "no" to the question of whether "the business entity, or an owner, partner, officer, director, member or manager is currently charged with committing a crime." Id. at 6. The ALJ found that on September 5, 2012, Robert completed an application to renew his license and answered "no" to the question of whether he was "currently charged with committing a crime." Ibid.

The ALJ further found that on May 5, 2014, Heidi completed an application for license renewal on behalf of RHM, in which she answered "no" to the question of whether "the business entity, or an owner, partner, officer, director, member or manager is currently charged with committing a crime." Ibid.

The ALJ found that on September 21, 2015, Robert completed an application for his own license renewal, in which he answered "no" to the question of whether he was "currently charged with committing a felony." Id. at 7.

The ALJ found that on April 25, 2016, Heidi completed an application for license renewal

on behalf of RHM, in which she answered "no" to the question of whether "the business entity, or an owner, partner, officer, director, member or manager is currently charged with committing a crime." Ibid.

The ALJ found that the Respondents were not obligated to disclose the federal investigation of Robert on their renewal applications prior to April 2016. Id. at 18. The question on each renewal application was, simply, whether any of specifically identified persons was "currently charged" with committing a crime. Ibid.

The ALJ concluded that RHM and Heidi violated N.J.S.A. 17:22A- 40(a)(1), only on April 25, 2016, five days after Robert, who was still a DRLP of RHM, was formally charged with mail fraud, and Heidi submitted an application to renew RHM's license that stated otherwise. Ibid.

Respondents' Motion for Summary Decision and Affirmative Defenses

The ALJ stated that the Respondents moved for summary decision on the grounds that the Department's claims are barred by the entire controversy doctrine, the statute of limitations, and laches. Ibid.

The Respondents argued that on May 10, 2017, the State of New Jersey brought an action to remove Robert from his position on the MOBOE, seeking a finding that he had forfeited any public office by pleading guilty to violations of 18. U.S.C. §§ 1341 and 2. Id. at 19. The Respondents argue that because this case derives from the exact same set of facts, the entire controversy doctrine prohibits the current matter. Ibid.

The ALJ stated that the fundamental principle of the entire controversy doctrine is that the adjudication of a legal controversy should occur in one litigation in only one court. Ibid. (citing DiTrolio v. Antiles, 142 N.J. 253, 267 (1995) (additional citations omitted)). Further, when applying the entire controversy doctrine in an administrative setting, the judge must fully

appreciate "[the particular] administrative agency's statutory foundations, its executive nature, and its special jurisdictional and regulatory concerns." Ibid. (quoting City of Hackensack v. Winner, 82 N.J. 1, 29 (1980)).

The ALJ found that the purpose of the forfeiture action in Superior Court was "to divest Robert of his position as a Member of the MOBOE, permanently disqualify him from holding any future position of trust or profit in New Jersey, and forfeit any pension or retirement benefits" he may have accrued. Ibid. However, the OTSC was issued to impose penalties on the Respondents for actions taken in violation of the Producer Act, which regulates the conduct of licensed insurance producers. Ibid. Issues related to the licenses of insurance producers could not have been brought in Superior Court and must first be raised in an administrative proceeding. Ibid. (citing N.J.S.A. 17:22A-40(a)). The ALJ found that the entire controversy doctrine would prohibit two actions in the same forum for different claims arising from the same set of facts. Ibid. However, a claim by the Commissioner for revocation of an insurance producer license could not be brought in Superior Court. Ibid. The ALJ concluded that the present action is not prohibited by the entire controversy doctrine. Ibid.

Penalties Recommended by the ALJ

The ALJ stated that pursuant to the Producer Act, the Respondents' licenses may be revoked. Id. at 24-25. The ALJ found that the Department established by a preponderance of the credible evidence that the Respondents failed to comply with laws established to protect the public. Id. at 25. Robert participated in a scheme to overcharge commissions and prevent the disclosure of the commissions to the MOBOE, and all three Respondents benefited from that scheme. Ibid. The ALJ concluded that revocation of the Respondents' licenses is appropriate under N.J.S.A. 17:22A-40(a). Ibid.

The ALJ noted that under the Producer Act, the Commissioner may impose a penalty of not more than $5,000 for the first violation, a penalty of not more than $10,000 for any subsequent violation, and reimbursement for the costs of investigation. Ibid. (citing N.J.S.A. 17:22A-45(c)).

The ALJ analyzed the seven factors for determining monetary penalties set forth in Kimmelman v. Henkles & McCoy, Inc., 108 N.J. 123, 137-39 (1987). Id. at 25-28. These factors include: (1) the good faith or bad faith of the Respondent; (2) the Respondent's ability to pay; (3) the amount of profits obtained from the illegal activity; (4) injury to the public; (5) duration of the illegal activity or conspiracy; (6) existence of criminal actions; and (7) past violations. Id. at 25.

As to the first factor in Kimmelman, the good or bad faith of the Respondents, the ALJ found that the Respondents argued that Robert had to participate in the scheme to overcharge the MOBOE to "get repaid." Id. at 26. They further argue that Robert showed good faith when he informed the MOBOE of the scheme in 2010, after the scheme had ended; began abstaining from votes by the MOBOE involving business with RHM; and cooperated with the FBI. Ibid. The ALJ found that it is difficult to evaluate Robert's motivations years later, but he had an ethical obligation to abstain from MOBOE votes that could benefit his company. Ibid. Further, Robert could have refused to get involved with the scheme or alerted the authorities before he was contacted by the FBI. Id. at 26-27.

As to the second factor in Kimmelman, the ability to pay, the ALJ stated that Respondents argued that they have already repaid more than $600,000 in restitution, accrued tax penalties when they liquidated their 401K accounts, and are currently on a payment plan with the New Jersey Division of Taxation. Id. at 27. The ALJ noted that the Respondents did not provide evidence of their finances and of their expenses. Ibid.

As to the third factor, the profits obtained, the ALJ stated that although Robert and RHM received twenty-one commission checks totaling $141,527, most of the funds received by RHM were funneled to other persons as part of the conspiracy. Ibid.

As to the fourth factor, injury to the public, the ALJ stated that there was injury to Cigna, the company who issued the insurance policies and paid inflated commissions. Ibid. Further, the MOBOE was injured because Robert, an elected official who was sworn to act in its best interests, was taking advantage of his position to enrich himself and his company, and to assist in a wider fraudulent conspiracy. Ibid. The ALJ found that the need to maintain public faith in insurance producers weighs in favor of penalizing the Respondents. Ibid.

Regarding the fifth factor in Kimmelman, the duration of illegal activity, the ALJ found that the Respondents overcharged commissions on policies sold to the MOBOE for three years. Ibid. It then took Robert four years to notify the Commissioner that charges would be filed against him. Id. at 27-28.

Regarding the sixth factor, the existence of criminal charges related to the matter, the ALJ found that Robert has served jail time, and paid considerable penalties for violations of federal criminal statutes. Id. at 28. The ALJ found that this factor weighs in the Respondents' favor.

For the final factor in Kimmelman, previous relevant regulatory and statutory violations, the ALJ found that on May 5, 2014, Robert and RHM entered into Consent Order No. E14-53 with the Department, in which they admitted to violating N.J.S.A. 17:22A-40(a)(2) and (8), and N.J.A.C. 11:17A- 1.3(d), by permitting an employee of RHM to conduct business in New Jersey through negotiation to procure an insured prescription drug plan for a proposed application, when that employee was not licensed as an insurance producer, and paid a $7,500 fine. Id. at 6, 28.

The ALJ found that it was of "greatest significance" that the Respondents have paid a great deal for a crime that they monetarily benefitted little from. Id. at 28. The Respondents have repaid the entire amount of commissions and a high monetary penalty to the federal government. Ibid. Further, they will no longer be able to work in insurance.[4] Ibid.

The ALJ also found that the Respondents ignored their obligations once their scheme was discovered. Ibid. They did not notify the Commissioner of the charges, even when renewing their insurance producer licenses. Ibid.

The ALJ found that it was appropriate that the Respondents be assessed a civil monetary penalty in the amount of $20,000. Ibid. The ALJ did not apportion the penalty between Respondents or Counts, nor did she indicate whether the fine was to be paid jointly and severally. The ALJ also found that it was appropriate to grant the Department's request for costs of investigation of $1,612.50 under N.J.S.A. 17:22A-45(c). Ibid.

EXCEPTIONS

Pursuant to N.J.A.C. 1:1-18.4(a), Exceptions were due on January 22, 2024. The Department filed its exceptions on January 18, 2024 and the Respondents filed theirs on January 22, 2024. Pursuant to N.J.A.C. 1:1-18.4(d), replies were due on January 29, 2024. The Department filed its Reply on January 26, 2024.

Department Exceptions

The Department agreed with the ALJ's finding of facts, but took exception to the ALJ's conclusion that the Respondents violated N.J.S.A. 17:22A-40(a)(1) only on April 25, 2016 when Heidi completed an application for license renewal on behalf of RHM. Department Exceptions at

[4] It appears that the ALJ stated that the Respondents would no longer be able to work in insurance because she recommended that their licenses be revoked.

2. The Department posited that the Respondents violated N.J.S.A. 17:22A-40(a)(1) when they submitted five applications to the Department, between June 1, 2012, and April 25, 2016, for renewal of their producer licenses which failed to accurately disclose Robert and RHM's criminal prosecution by the DOJ. Ibid. The Department stated that it was a violation of the Producer Act to provide incorrect, misleading, incomplete, or materially untrue information in a license application. Ibid. (citing N.J.S.A. 17:22A-40(a)(1)).

The Department stated that on July 2, 2012, Robert entered into a Plea Agreement, dated June 5, 2012, with the DOJ. Ibid. The Plea Agreement was related to a Robert's scheme to defraud the MOBOE and specifically stated that Robert would plead guilty to a charge of violating 18 U.S.C. §§ 1341 and 2. Ibid. However, the Manias completed five renewal applications between June 1, 2012, and April 25, 2016, and answered "no" when asked if a member or manager of the business entity was currently charged with committing a crime. Id. at 2-3.

The Department argued that in each of these five separate instances, the Manias provided incorrect or misleading information in a license application, which is a violation of N.J.S.A. 17:22A-40(a)(1). Id. at 3. Further, each application constitutes a separate violation of the Producer Act. Ibid. (citing Merin v. Maglaki, 126 N.J. 430, 437 (1992)).

The Department requested that the Commissioner issue a final decision modifying the ALJ's finding that the Respondents violated N.J.S.A. 17:22A-40(a)(1) only once and instead find that the Respondents violated this regulation five times. Ibid. The Department deferred to the Commissioner as to whether this finding would increase the amount of penalties. Ibid.

Respondents' Exceptions and Department's Reply

Count One

The Respondents argued that they are entitled for Summary Judgment on Count One of the OTSC, alleging that Robert failed to report to the Commissioner within 30 days of entering into the plea agreement in violation of N.J.S.A. 17:22A-40(a)(18) and N.J.S.A. 17:22A-47(b). Respondents' Exceptions at 4. The Initial Decision presumes that Robert was charged on July 12, 2012 when he entered into the plea agreement. Id. at 9. The Respondents argue that this is inaccurate because Robert was first charged on April 21, 2016 when the Information was filed. Ibid. Robert's counsel informed the Department of the charges on April 28, 2016. Ibid. Respondents further rely on a Certification of Joseph A. Hayden, Esq., ("Hayden") who has been practicing criminal law for 50 years. Id. at 4-5. The Respondents argue that the ALJ's description of the plea agreement acting as a "de facto indictment" is unsupported by any case law and the Department did not submit any opposing expert certifications. Id. at 5-6.

The Department counters that Hayden is another partner at Respondents' Counsel's firm. Department Reply at 5. The Department argues that the Respondents' reliance on a different lawyer at the same firm does not present a good reason to modify the Initial Decision. Ibid. The Department argues that whether a plea agreement is the equivalent of a criminal charge is a legal issue and not within the purview of an expert or fact witness. Ibid. Further, Hayden was never disclosed in discovery as an expert and was never qualified or accepted as an expert witness. Ibid.

Count Two

The Respondents argue that the ALJ erred when she found that the money that Robert received from the insurance "broker of record" for the MOBOE, Frank Cotroneo ("Cotroneo"), was from inflated or overcharged commissions. Respondents' Exceptions at 7 (citing Initial

Decision at 14, 15, 16, 27). The Respondents argued that there was no evidence of inflation or overcharging commissions. Ibid. Rather, Cotroneo shared portions of monetary commissions that the MOBOE paid to him for insurance from September 2007 to June 2009 to pay off financial obligations he owed to Robert from past insurance business. Id. at 8-9.

The Respondents state that Robert's plea was based on his non-disclosure as someone who shared commissions with Cotroneo and his interest in the insurance transactions of the MOBOE in 2007 through the reauthorization of the 2007-09 insurance year. Id. at 8. The insurance regulations requiring disclosure of those sharing in the insurance commissions did not take effect until early 2009. Ibid.[5] Further, Robert recused himself from voting on insurance matters before the MOBOE from 2007 to 2009. Ibid. The Respondents aver that Robert pled guilty to mail fraud for non-disclosure, not to overcharging commissions. Ibid.

The Department counters that Robert was an elected member of the MOBOE and he abused that position of power to divert hundreds of thousands of dollars to himself and others. Department Reply at 6.

The Respondents also take Exception to the second part of Count Two, which charges Robert with continuing to work in the insurance industry after having been convicted of a felony involving breach of trust or dishonesty without first obtaining a waiver from the Commissioner. Respondents' Exceptions at 9. The Respondents argue that Robert was not conducting the business of insurance after charges were filed against him in April 2016. Ibid. The Respondents argue that Robert was entitled to a hearing to determine when he ceased conducting insurance business and whether he did so after his conviction on April 25, 2017. Ibid.

---

[5] The Respondents cite to regulations at N.J.A.C. 11:17B-4 for this proposition. Although a proposal for new rules at N.J.A.C. 11:17B-4.1 to -4.4 was filed at 41 N.J.R. 3014(a) (Aug. 17, 2009), these rules were never adopted.

The Respondents also argue that the ALJ erred in her failure to recognize that when the Department denied the renewal of Robert's insurance producer license in October 2017, it subjected him to a form of revocation. Ibid. The Respondents argue that Robert is entitled to a hearing as to whether he is a rehabilitated offender who should be permitted to reapply for his license. Ibid.[6]

Count Three

The Respondents argue that the ALJ erred when she did not dismiss Count Three on the grounds of it being outside the Statute of Limitations. Id. at 2. The Respondents argue that the ten-year statute of limitations expired three years before the Department filed the OTSC. Id. at 2-3. The Respondents argue that the statute of limitations should not be extended. Id. at 3 (citing Burd v. New Jersey Tel. Co., 76 N.J. 284, 291-292 (1978) ("There is no suggestion…that accrual of the cause of action is postponed until plaintiff learns or should learn the state of the law positing a right of recovery upon the facts already known to or reasonably knowable by the plaintiff.")).

The Respondents also argue that Heidi was entitled to a hearing on Count Three because there was a genuine issue of material fact. Ibid. The Respondents argue that Heidi only provided RHM sporadic secretarial and administrative services while she was employed fulltime elsewhere between 2005-2012. Ibid. The Respondents argue that Heidi was unaware of the charges against Robert until June 2016 when she requested that his criminal counsel provide her with the details of the charges that had been brought against him. Id. at 3, 6-7. Heidi was unaware of Robert's conduct because they had become estranged due to his alcoholism. Id. at 6. However, she was found vicariously liable even though she did not participate in the scheme because she owned more than 10 percent of RHM and was responsible for its insurance related conduct under N.J.A.C.

[6] The Department does not reply to these arguments in their Reply Brief.

11:17A-1.6(c). Id. at 3 (citing Initial Decision at 17). The Respondents argue that there is a genuine issue of material fact as to whether Heidi knew of the existence of Robert's fraud. Ibid. The Respondents argue that summary judgment is inappropriate where a defense requires a determination of a party's state of mind or intent. Ibid. (citations omitted).

The Respondents argue that N.J.A.C. 11:17A-1.6(c) should not apply to Heidi. Id. at 4. She did not supervise Robert, who was the DRLP for the medical insurance side of RHM's business. Ibid. The Respondents argue that Heidi was a "passive minority owner" during the timeframe alleged in Count Three, September 2007 to June 2009. Ibid. Accordingly, Heidi should not be held liable for Robert's conduct in the area of "medical business", in which he was solely responsible, and she was not licensed in at that time. Ibid.

The Department argues that the ALJ considered Heidi individually and discussed her liability in the Initial Decision. Department Reply at 2-3 (citing Initial Decision at 3-8, 15-17). The Respondents argue that between October 2007 to June 2009 Heidi was a DRLP for RHM, owned a 49 percent interest in RHM, worked at RHM part time, and had access to RHM's records. Id. at 3. During this time, Robert was using RHM as "a conduit for funneling his ill-gotten gains..." Ibid. The Department argues that Heidi was an active officer and was individually responsible for the insurance related conduct of RHM under N.J.A.C. 11:1-12.2(a). Ibid. Further, because she owned more than 10 percent of RHM, she was responsible for its insurance related conduct under N.J.A.C. 11:17A-1.6(c). Ibid.

Count Four

The Respondents further argue that Heidi is entitled to a hearing on Count Four, which alleges that she did not disclose that Robert, who was still a DRLP of RHM, was currently charged with a crime when she renewed RHM's license on April 25, 2016 in violation of N.J.S.A. 17:22A-

40(a)(1). The Respondents argue that Heidi was correct in answering "no" to the question regarding if any of RHM's owners, partners, officers, director, members or managers were currently charged with committing a crime because Robert had resigned and severed his connection to RHM in 2012 and the Department was informed. Id. at 2. By April 2016, RHM had sold and transferred its assets and was an empty shell. Ibid. The Respondents aver that Heidi was advised by counsel for the entity that purchased RHM to answer "no" to that question since Robert had transferred his ownership of RHM, and filed an unqualified resignation from all offices of RHM with the Department in 2012. Ibid. The Respondents argue that the Department did not update its records when it received Robert's resignation, but that is not proof that Robert remained RHM's DRLP. Ibid. The Respondents argue that punishment for Heidi is unwarranted under legal doctrines that protect innocent spouses and because her actions were de minimus. Ibid.

The Department argues that Heidi is not an innocent spouse who was "punished" because she was married to Robert and she cannot "hide behind her husband's dependency issues or their marital strife to absolve her of her own liability" for RHM's wrongdoing. Department Reply at 4. The Department argues that the ALJ's recommendation to revoke Heidi's producer license is appropriate and should not be disturbed. Ibid.

The Respondents also argue that laches shortens the statute of limitations of Count Four because the attorney who advised Heidi to answer no to this question, who was the counsel for the party who acquired RHM's assets in 2016, is unavailable because he is retired and no longer lives in New Jersey. Respondents' Exceptions at 3, 9. Heidi is significantly prejudiced by the unavailability of this witness. Id. at 9.

The Respondents also argue that the ALJ did not distinguish Heidi's conduct from that of Robert. Id. at 1. The Respondents argue that the ALJ treated Robert and Heidi as one, revoked

both their licenses, and ordered that the fines be paid joint and several without justification for Heidi's "drastically different circumstances." Ibid.

The Respondents also argue that the ALJ erred when she did not dismiss the OTSC under the entire controversy doctrine. Id. at 6. The Respondents rely on Hackensack v. Winner, 82 N.J. 1 (1980) and argue that the ALJ did not distinguish Winner. Ibid.

The Department argues that the ALJ dedicated a significant portion of the Initial Decision to Respondents' affirmative defenses, including laches, the statute of limitations, and the entire controversy doctrine. Department Reply at 4 (citing Initial Decision at 18-23). The Department argues that the ALJ relied on relevant case law and found that the statute of limitations, laches, and the entire controversy doctrine were all inapplicable and did not bar the Department's claims. Id. at 4-5.

LEGAL DISCUSSION

The Department bears the burden of proving the allegations in an Order to Show Cause by a preponderance of the competent, relevant, and credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). The evidence must be such as would lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263 (1958). Preponderance may be described as: "the greater weight of credible evidence in the case not necessarily dependent on the number of witnesses, but having the greater convincing power." State v. Lewis, 678 N.J. 47 (1975).

As noted by the ALJ, N.J.A.C. 1:1-12.5(b) provides the standard to determine whether summary decision should be granted in a contested case. Specifically, the provision states that a summary decision may be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged

and that the moving party is entitled to prevail as a matter of law." Ibid. The rule also provides that "when a motion for summary decision is made and supported, an adverse party, in order to prevail must, by responding affidavit, set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid.

The ALJ found that the Respondents failed to adduce evidence that would create a genuine issue as to any material fact and that summary decision is appropriate as to the allegations contained in Counts One through Four of the OTSC and I ADOPT this finding.

Entire Controversy Doctrine

On May 10, 2017, two weeks after Robert's conviction, the State of New Jersey, represented by the New Jersey Office of the Attorney General, filed a complaint, brief, and Order to Show Cause against Robert seeking forfeiture of Robert's public office, permanent disqualification from any position of public honor, trust, or profit, and forfeiture of retention and retirement benefits pursuant to N.J.S.A. 2C-51.2. Certification of Robert Mania ¶9 and Ex. B attached thereto.

The ALJ stated that the fundamental principle of the entire controversy doctrine is that the adjudication of a legal controversy should occur in one litigation in only one court. Initial Decision at 18 (citing DiTrolio, 142 N.J. at 267). The ALJ found that the purpose of the action brought against Robert in Superior Court was different than the action brought by the Department in the OAL. Ibid. The ALJ concluded that the present action is not prohibited by the entire controversy doctrine. Ibid.

The Respondents argue that the ALJ erred when she did not dismiss the OTSC under the entire controversy doctrine. Respondents' Exceptions at 6. The Department argues that the ALJ

relied on relevant case law and found that the entire controversy doctrine was inapplicable and did not bar the Department's claims. Department Reply at 4-5.

The entire controversy doctrine provides that the non-joinder of claims or parties that are required to be joined shall result in the preclusion of the omitted claims. DiTrolio, 142 N.J. at 266 (citing R. 4:30A, which codified the entire controversy doctrine)). The fundamental principle behind this policy is that the adjudication of a legal controversy should occur in one litigation in only one court. DiTrolio, 142 N.J. at 267 (citing Cogdell v. Hopsital Ctr., 116 N.J. 7, 15 (1989)). The primary consideration is whether the claims against the different parties arise out of related facts of the same transaction or series of transactions. DiTrolio, 142 N.J. at 267. It does not require commonality of legal issues. Id. at 271. "Fairness in the application of the entire controversy doctrine focuses on the litigation posture of the respective parties and whether all of their claims and defenses could be most soundly and appropriately litigated and disposed of in a single comprehensive adjudication." Wadeer v. New Jersey Mfrs. Ins. Co., 220 N.J. 591, 606 (2015) (quoting Cafferata v. Peyser, 251 N.J. Super. 256, 277 (App. Div. 1991)). In considering fairness to the party whose claim is sought to be barred, a court must consider whether the claimant has "had a fair and reasonable opportunity to have fully litigated that claim in the original action." Gelber v. Zito P'ship, 147 N.J. 561, 565 (1997) (quoting Cafferata, 251 N.J. Super. at 261). The test to determine whether claims must be brought in a single action is:

> If parties or persons will, after final judgment is entered, be likely to have engaged in additional litigation to conclusively dispose of their respective bundles of rights and liabilities that derive from a single transaction or related series of transactions, the omitted components of this dispute must be regarded as constituting an element of one mandatory unit of litigation.
> DiTrolio, 142 N.J. at 267 (citing O'Shea v. Amoco Oil Co., 886 F.2d 584 (3d. Cir. 1989)).

I ADOPT the ALJ's finding that the entire controversy doctrine does not bar the Department's claims in the present matter. The Commissioner has the power to suspend or revoke insurance producer licenses, not the Superior Court. N.J.A.C. 17:22A-40(a). This matter could not have been brought by the Department in the Superior Court. The action brought by the State of New Jersey in Superior Court was brought under N.J.S.A. 2C:51-2, which provides that a person holding a public office or position who is convicted of an offense shall forfeit the office if certain conditions are met. The Commissioner does not have the authority to enforce the New Jersey criminal statutes, and could not order that Robert forfeit his public office or pension.

In Winner, firefighters who were denied promotions alleged it was because of their pro-union activity. 82 N.J. at 9-10. The Firefighters brought separate actions before two administrative agencies, the Civil Service Commission ("CSC") and the Public Employment Relations Commission ("PERC"), which reached different findings of fact, conclusions, and imposed inconsistent remedies. Id. at 10-12. The Court noted that judicial doctrines, such as collateral estoppel and the entire controversy doctrine, have an important place in administrative law. Id. at 32-33. The Court held that PERC should have stayed its proceedings until after the CSC had reached a determination. Id. at 35.

In Winner, PERC and the CSC had similar powers and jurisdiction, which is why inconsistent findings of fact and conclusions of law were reached and why inconsistent remedies were imposed. Because the Superior Court and the Commissioner have different powers and duties, there is no threat of inconsistent remedies being imposed in this matter.

Allegations Against Respondents

The OTSC alleges that Robert participated in a scheme to overcharge the MOBOE more than $400,000 by fraudulently overstating insurance commissions between 2007 and 2009. The

funds were diverted through RHM to Robert. Robert entered into a plea agreement and later pled guilty to mail fraud in violation of 18 U.S.C. §§ 1341 and 2. The OTSC alleges that Robert did not inform the Commissioner of the criminal charges against him within 30 days and failed to obtain a waiver from the Commissioner to be employed in the insurance business. Lastly, the OTSC alleges that RHM did not disclose that Robert was currently charged with committing a crime when it submitted its renewal application for its producer license on April 25, 2016.

Factual Findings Common to All Counts

I ADOPT the ALJ's finding that Robert was licensed as a resident insurance producer from July 23, 2003 until September 30, 2017 when the Department denied Robert's license renewal. Initial Decision at 3. I MODIFY to also find that the letter from the Department denying Robert's license renewal application advised Robert that he must have written consent from the Commissioner prior to working in the insurance industry, and attached the application to apply for a waiver under 18 U.S.C. §1033. Letter from Joseph. A. McDougal dated October 18, 2017, attached as Exhibit E to the Certification of James A. Plaisted. The letter also informed Robert that he could request a hearing on the decision to deny his license renewal application. Ibid. Robert never appealed the denial and did not submit a waiver application under 18 U.S.C. §1033. Certification of Joseph A. McDougal ¶¶ 5-6.

I ADOPT the ALJ's findings that Heidi was first licensed as a resident insurance producer on June 26, 1996. Initial Decision at 3. RHM was incorporated on March 15, 2005. Ibid. RHM was licensed as a resident insurance producer from May 10, 2006 to May 31, 2018 when its license expired. Id. at 3-4. From its inception to July 1, 2012, Robert owned 51 percent of RHM, and Heidi owned 49 percent of RHM. Certification of Investigator Eugene Shannon ("Shannon Cert.") ¶6, letter from Heidi's attorney dated May 3, 2017 attached as Exhibit 4 thereto. I MODIFY to

supplement the ALJ's findings and find that both Robert and Heidi were listed as DRLPs for RHM from May 10, 2006 to May 31, 2018. Shannon Cert. ¶9, RHM License Summary attached as Exhibit 6 thereto.

Effective June 30, 2012, Robert resigned as "Owner, Partner, Officer, Director, or Member of RHM..." Shannon Cert. ¶7, Exhibit 5 attached thereto. By letter dated September 6, 2012 Heidi informed the Department she owned 100 percent of RHM, and that Robert had sold his shares to her as of July 1, 2012. Exhibit 5 attached to Shannon Cert. She asked that Robert be removed as "an owner and/or shareholder" of RHM. Ibid.

Between March 15, 2005 and July 1, 2012, Heidi performed part time administrative work for RHM, such as processing payroll, creating RHM's website, ordering office supplies, and reimbursed employees for work related expenses. Initial Decision at 4. Between March 15, 2005 and July 1, 2012, Heidi was compensated by RHM, had partial access to its business records and its bank accounts for payroll. Id. Between March 15, 2005 and July 1, 2012, Heidi and Robert shared a joint checking account for their mortgage payments. Id.

I also MODIFY the ALJ's factual findings to add more detail regarding Robert's conduct. One June 5, 2012, Robert was presented with a plea agreement by the U.S. attorney for the District of New Jersey. Shannon Cert. ¶11; Ex. 7 attached thereto; Ex. D2 to Cert. of Robert Mania. The U.S. attorney agreed to accept a guilty plea to a one count information charging Robert with "from in or about 2007 to 2009, participating in a scheme to defraud the Mount Olive Township School District ("MOTSD") of over $400,000 in MOTSD funds by diverting to himself and others health insurance fees paid by the MOTSD to its insurance carrier in violation of 18 U.S.C. § 1341 and § 2." Ibid. The plea agreement stated that the U.S. attorney would bring the agreement to the attention of other prosecuting offices, if requested to do so. Ibid. The plea agreement did not

prohibit a third party from prosecuting Robert in administrative proceedings. Ibid. Robert signed the plea agreement on July 2, 2012. Ibid. Robert then provided "substantial and useful assistance to the investigation and prosecution of" other individuals. U.S. attorney letter to Hon. Freda L. Wilson dated April 19, 2017, attached as Exhibit A to the Certification of James A. Plaisted.

On April 21, 2016, Robert was formally charged by the U.S. attorney by the filing of a Criminal Information, as Robert had waived indictment. Shannon Cert. ¶17, Criminal Information in U.S. v. Mania, Crim. No. 16-199-01 (FLW) attached as Ex. 12 thereto.

On April 21, 2016, Robert pled guilty to mail fraud in violation of 18 U.S.C. § 1341 and § 2. Shannon Cert. ¶18, guilty plea transcript attached as E thereto. As part of his allocution, Robert testified that he was a member of the MOBOE from 1996 to 2009. T[7] 30:5-9. An "Insurance Broker"[8] was appointed as the risk management consultant for the MOTSD. T 30:16-24. The Insurance Broker received commission payments from the MOTSD health insurance carrier, which were based on a percentage of the yearly premium paid by the MOTSD. T 30:25-31:5. Cotroneo[9] was an employee of the Insurance Broker who oversaw the MOTSD's account. T 31:6-9. From 2007 through 2009, Robert and others participated in a scheme to defraud the MOTSD by inflating the commission rate to be paid on the MOTSD's health insurance account and then Robert diverted a portion of the commissions to himself and others. T 31:10-19. In or about June of 2007, with Robert's knowledge and approval, Cotroneo instructed the MOTSD's health

---

[7] "T" refers to the transcript of Robert's guilty plea taken on April 21, 2016 attached as Exhibit E to Shannon Cert.

[8] The Criminal Information and Freda L. Wilson, U.S.D.J., who took Robert's plea allocution, refer to an unnamed "Insurance Broker."

[9] Cotroneo was sentenced to 37 months' imprisonment for his "involvement in the Toms River School District bribery scheme, among other things." U.S. attorney letter to Freda L. Wilson, U.S.D.J. dated April 19, 2017, attached as Exhibit A to the Certification of James A. Plaisted.

insurance carrier to increase the commission rate from four percent to five percent and to pay the additional one percent of the commissions to a company controlled by an Associate[10] of the Insurance Broker. T 31:25-32:7. The increase in commissions and the payments to the Associate's Company were not disclosed to the MOBOE or the MOTSD. T 31:9-13. In September 2007, at Robert's direction, the Associate's Company began to distribute the diverted commissions to Robert via RHM. T 31:14-19.

In order to conceal this scheme, the Robert caused the MOTSD's health insurance provider to mail the annual disclosure statements for its account, which detailed the commission rate and payments to the Associate's Company, to Robert's personal post office box. T 32:25-33:7. Robert had the disclosures diverted to prevent them from being transmitted to the MOTSD. T 33:8-11. The concealment of the annual disclosure statements from the MOTSD created the false pretense that it was paying one broker a commission rate of four percent, instead of paying two brokers a commission rate of five percent. Criminal Information at ¶5c. Robert's use of his official position to intercept the disclosures to MOTSD from the insurance provider that detailed the rate increases and payments to Cambrian, a company that received commissions diverted by Cotroneo and distributed them to other entities, such as RHM, was crucial to the success of the scheme. U.S. attorney letter to Hon. Freda L. Wilson dated April 19, 2017, attached as Exhibit A to the Certification of James A. Plaisted. From October 2007 to June 2009, Robert received over $370,000 in commissions on the MOTSD's account and he did not disclose the receipt of these funds to either the MOBOE or the MOTSD. T 33:17-25.

[10] The Criminal Information and Freda L. Wilson, U.S.D.J., who took Robert's plea allocution, refer to an unnamed "Associate." The Associate was David Flannery. U.S. attorney letter to Freda L. Wilson, U.S.D.J. dated April 19, 2017, attached as Exhibit A to the Certification of James A. Plaisted.

While he was serving on the MOBOE, Robert recused himself from insurance matters. Cert. of James E. Schiess ¶2.

On April 26, 2016, after seeing news articles, Investigator Shannon contacted Robert regarding the charges filed against him and his guilty plea. Shannon Cert. ¶21. By letter dated April 28, 2016, Robert's counsel confirmed that Robert pled guilty on April 21, 2016, the same day that charges were filed. Shannon Cert. ¶22, Letter from James Plaisted, Esq., attached as Exhibit 14 thereto.

Robert was sentenced on April 25, 2017. Judgment in a Criminal Case attached as Ex. D2 to Cert. of Robert Mania; Shannon Cert. ¶23, Exhibit 15 attached thereto. Robert was sentenced to three months' imprisonment, supervised release for a term of three years, a $100 assessment, a fine of $3,000, and $141,527.00 in restitution to the MOBOE. Ibid.

On May 5, 2014, Robert and RHM entered into Consent Order No. E14-53, in which they admitted to violating N.J.S.A. 17:22A-40(a)(2) and (8), and N.J.A.C. 11:17A-1.3(d), by permitting an employee of RHM to conduct business in New Jersey through negotiation to procure an insured prescription drug plan for a proposed application, when that employee was not licensed as an insurance producer and paid a $7,500 penalty. Initial Decision at 6, 28. Robert signed the Consent Order on April 11, 2014 and indicated that his title was "Principal." Shannon Cert. ¶26 and Exhibit 16 attached thereto.

On February 1, 2016, Heidi and RHM entered into an agreement with Strategic Insurance Partners ("SIP") where SIP agreed to buy RHM's insurance accounts. Accounts Purchase Agreement attached as Ex. B to Cert. of Heidi Mania. RHM agreed to cooperate with the transition of the policies "pursuant to the terms of the Consulting Agreement between SIP and [Robert] an

officer and/or employee of RHM..." SIP also agreed to engage the services of Heidi as an employed insurance producer.[11] Ibid.

Count One – Failure to Notify of Criminal Prosecution (Robert Mania)

Count One of the OTSC alleges that Robert failed to notify the Commissioner of the criminal prosecutions against him within thirty (30) days, in violation of N.J.S.A. 17:22A-40(a)(18) and N.J.S.A. 17:22A-47.

The ALJ concluded that Robert had the obligation to notify the Commissioner when he became aware of the charges that would be filed against him, not simply when formal charges were filed. Initial Decision at 12. Accordingly, the ALJ found that Robert was required to notify the Commissioner within 30 days of executing the plea agreement and the Department proved the allegations in Count One of the OTSC by a preponderance of the credible evidence. Ibid

The Respondents argue that Robert was first charged on April 21, 2016 when the Information was filed. Respondents' Exceptions at 9. Robert's counsel informed the Department of the charges on April 28, 2016. Ibid. The Respondents argue that the ALJ's description of the plea agreement acting as a "de facto indictment" is unsupported by any case law. Id. at 5-6.

On April 21, 2016 Robert was formally charged by the U.S. attorney by the filing of a Criminal Information, as Robert had waived indictment. Shannon Cert. ¶17, Criminal Information in U.S. v. Mania, Crim. No. 16-199-01 (FLW) attached as Ex. 12 thereto. On April 21, 2016, Robert pled guilty to mail fraud in violation of 18 U.S.C. §§ 1341 and 2. Shannon Cert. ¶18, guilty plea transcript attached as Exhibit E thereto. On April 26, 2016, after seeing news articles, Investigator Shannon contacted Robert regarding the charges filed against him and his guilty plea.

[11] The Consulting Agreement between SIP and Robert and the Producer Agreement between SIP and Heidi were not provided.

Shannon Cert. ¶21. By letter dated April 28, 2016, Robert's counsel confirmed that Robert pled guilty on April 21, 2016, the same day that charges were filed. Shannon Cert. ¶22, Letter from James Plaisted, Esq., attached as Exhibit 14 thereto.

N.J.S.A. 17:22A-40(a)(18) requires that a producer must notify the Commissioner "within 30 days of...indictment or the filing of any formal criminal charges..." Courts interpret words in a statute according to their plain meaning. White v. Mattera, 175 N.J. 158, 165 (2003). When interpreting statutes, "the first step is to look at the plain meaning of the provision at issue." Middletown Tp. PBA Local 124 v. Township of Middletown, 193 N.J. 1, 12 (2007). "When engaging in this analysis, if the Legislature has not provided otherwise, words are to be given 'ordinary and well-understood meanings.'" Ibid. (quoting Alan J. Cornblatt, P.A. v. Barow, 153 N.J. 218, 231 (1997) (additional citations omitted)). When the statutory language is clear, "the court's sole function is to enforce the statute in accordance with those terms." Middletown Tp. PBA Local 124, 193 N.J. at 12. A "court has no power to substitute its own idea of what a statute should provide in the face of clear and unambiguous statutory requirements." Ibid. The plain meaning of N.J.S.A. 17:22A-40(a)(18) requires that producers notify the Commission within 30 days "of...the filing of any formal criminal charges..."

Further, a plea agreement is not a "de facto indictment." A plea agreement is a bargained-for and negotiated exchange of promises. United States v. Williams, 510 F.3d 416, 422 (2007) (citing Santobello v. New York, 404 U.S. 257, 262 (1971)). However, grand juries decide whether there is sufficient probable cause to return an indictment. State v. Shaw, 241 N.J. 223, 229 (2020). The grand jury "is an accusative rather than an adjudicative body," whose task is to "'assess whether there is adequate basis for bringing a criminal charge.'" State v. Saavedra, 222 N.J. 39, 56 (2015) (quoting State v. Hogan 144 N.J. 216, 229-30 (1996)). An offense punishable by

imprisonment for more than one year may be prosecuted by information if the defendant waives prosecution by indictment. Fed. R. Crim. P. 7(b). The information is a pleading in a criminal proceeding. Fed. R. Crim. P. 12(a). A criminal information is a formal criminal charge made by a prosecutor without a grand jury indictment. Black's Law Dictionary (10th ed. 2014).

Formal charges were not filed against Robert until April 21, 2016 when the U.S. attorney filed the Criminal Information. Robert's attorney confirmed with Investigator Shannon that formal charges were filed against Robert within 30 days. Accordingly, I REJECT the ALJ's conclusion that Robert violated N.J.S.A. 17:22A-40(a)(18) (failing to notify of conviction, indictment, filing of formal charges, suspension or revocation of license in another state...). I also REJECT the ALJ's determination the Robert violated N.J.S.A. 17:22A-47(b) which obligates licensed producers to report to the commissioner any criminal prosecution of the producer taken in any jurisdiction within 30 days of the initial pretrial hearing date. There is no evidence in the record regarding if or when an initial pretrial hearing date was held.

Count Two – Conviction of Mail Fraud and Failure to Notify of Conviction and Obtain a Waiver (Robert Mania)

Count Two of the OTSC alleges that Robert pleaded guilty to and was convicted of Mail Fraud, a felony, and failed to notify the Commissioner within thirty (30) days of the conviction of Mail Fraud, in violation of N.J.S.A. 17:22A-40(a)(2), (6), (7), (8), and (16); and further, following his conviction of a felony in the fourth degree or higher, failed to obtain a waiver from the Commissioner to be employed in the business of insurance in this State as required by N.J.A.C. 11:17E-1.3 and 18 U.S.C. § 1033(e)(2).

The ALJ found that Robert pled guilty and was convicted of mail fraud in violation of 18 U.S.C. §1341, which is a felony of the fourth degree or higher involving breach of trust or dishonesty on April 25, 2017. Initial Decision at 7, 14. Accordingly, the ALJ concluded that the

Department proved that Robert violated N.J.S.A. 17:22A-40(a)(2), (6), and (7) by a preponderance of the credible evidence. Initial Decision at 14, 15.

The Respondents argue that the ALJ erred when she found that the money that Robert received from the broker of record for the MOBOE, Cotroneo, was from inflated or overcharged commissions. Respondents' Exception at 7 (citing Initial Decision at 14, 15, 16, 27). The Respondents argued that there was no evidence of inflation or overcharging commissions. Ibid. Robert's plea was based on his nondisclosure as someone who shared commissions with Cotroneo and his interest in the insurance transactions of the MOBOE in 2007 through the reauthorization of the 2007-09 insurance year. Id. at 8. The Respondents aver that Robert pled guilty to mail fraud for non-disclosure, not to overcharging commissions. Ibid. The Department counters that Robert was an elected member of the MOBOE and he abused that position of power to divert hundreds of thousands of dollars. Department Reply at 6.

On April 21, 2016, Robert pled guilty to mail fraud in violation of 18 U.S.C. §§ 1341 and 2. Shannon Cert. ¶18, guilty plea transcript attached as E thereto. During his allocution, Robert testified that from 2007 through 2009, while he was a member of the MOBOE, he and others participated in a scheme to defraud the MOTSD by inflating the commission rate to be paid on the MOTSD's health insurance account and then Robert diverted a portion of the commissions to himself and others. T 31:10-19. In or about June of 2007, with Robert's knowledge and approval, Cotroneo instructed the MOTSD's health insurance carrier to increase the commission rate from four percent to five percent and to pay the additional one percent of the commissions to a company controlled by an Associate of the Insurance Broker. T 31:25-32:7. The increase in commissions and the payments to the Associate's Company were not disclosed to the MOBOE or the MOTSD. T 31:9-13.

In order to conceal this scheme, Robert caused the MOTSD's health insurance provider to mail the annual disclosure statements for its account, which detailed the commission rate and payments to the Associate's Company, to Robert's personal post office box. T 32:25-33:7. Robert had the disclosures diverted to prevent them from being transmitted to the MOTSD. T 33:8-11. The concealment of the annual disclosure statements from the MOTSD created the false pretense that it was paying one broker a commission rate of four percent, instead of paying two brokers a commission rate of five percent. Criminal Information at ¶5c. Robert's use of his official position to intercept the disclosures to MOTSD from the insurance provider that detailed the rate increases and payments to Cambrian, a company that received commissions diverted by Cotroneo and distributed them to other entities, such as RHM, was critical to the success of the scheme. U.S. attorney letter to Hon. Freda L. Wilson dated April 19, 2017, attached as Exhibit A to the Certification of James A. Plaisted.

While Robert may not have pled guilty to overcharging commissions, he participated in and benefited from a scheme where commissions for insurance were increased without the MOTSD's knowledge. Robert then used his official position to intercept and conceal disclosures which would have alerted the MOTSD that it was paying two brokers a commission rate of five percent, rather than paying one broker a commission of four percent.

Accordingly, I ACCEPT the ALJ's determination that Robert violated N.J.S.A. 17:22A-40(a) (2) (violating any insurance law or regulation), (6) (convicted of a felony or crime of the fourth degree or higher) and (7) (committing any insurance unfair trade practice or fraud). Robert was convicted of mail fraud in violation of 18 U.S.C. § 1341 and § 2, a felony. Further, the concealment of the disclosures was fraud.

I MODIFY as to N.J.S.A. 17:22A-40(8) and (16). The ALJ made no findings as to these violations contained in the OTSC. I find that Robert violated N.J.S.A. 17:22A-40(8) (dishonest practices, demonstrating incompetence, unworthiness, or financial irresponsibility) and (16) (any fraudulent act). Robert's use of his official position to conceal the annual disclosures demonstrates unworthiness and was a dishonest practice. Further, Robert's plea to mail fraud in violation of 18 U.S.C. §§ 1341 and 2 violated N.J.S.A. 17:22A-40(16) because it was a fraudulent act.

The ALJ does not address whether Robert failed to notify the Department of the conviction as alleged in Count Two. Further, although Count Two alleges that Robert failed to notify the Department of his conviction, it does not charge him with violating N.J.S.A. 17:22A-40(a)(18) (failing to notify of conviction, indictment, filing of charges, suspension or revocation of license in another state…). The Department did not take exception and did not argue that Robert failed to notify the Department of his conviction. Further, in its brief in support of Summary Decision, the Department does not present any proof or argument that Robert failed to notify the Department of his conviction within 30 days. I make no findings as to whether Robert failed to notify the Department of his conviction within 30 days.

The ALJ additionally found that Robert violated N.J.A.C. 11:17E-1.3 (must obtain a waiver if convicted under 18 U.S.C. § 1033 to be employed in the business of insurance in this State) and 18 U.S.C. § 1033(e)(2) (prohibits individuals who have been convicted of a felony crime involving dishonesty or breach of trust from working in the insurance industry unless they obtain written consent from their state insurance commissioner). Initial Decision at 14-15.

The Respondents argue that Robert was not conducting the business of insurance after charges were filed against him in April 2016, and a waiver was unnecessary. Respondents' Exceptions at 9.

I concur with the ALJ that there is no dispute that Robert did not obtain a waiver to be employed in the business of insurance and that he continued to hold an insurance license after he was convicted until his license expired on September 30, 2017 when the Department denied Robert's license renewal. The letter denying Robert's license renewal application advised Robert that he must have written consent from the Commissioner prior to working in the insurance industry, and attached the application to apply for a waiver under 18 U.S.C. §1033. Letter from Joseph. A. McDougal dated October 18, 2017, attached as Exhibit E to the Certification of James A. Plaisted. The letter also informed Robert that he could request a hearing on the decision to deny his license renewal application. Ibid. Robert never appealed the denial and did not submit a waiver application under 18 U.S.C. §1033. Certification of Joseph A. McDougal ¶¶ 5-6.

Pursuant to 18 U.S.C. § 1033(e)(2), no person having been convicted of a felony involving dishonesty or a breach of trust shall engage in the business of insurance without having first obtained the written consent of the Commissioner. In order to satisfy this requirement, said person must apply for a waiver pursuant to N.J.A.C. 11:17E-1.1 to -1.7. Robert failed to do so, and continued to hold an insurance producer license after he was convicted of a crime of dishonesty or breach of trust. However, there is no requirement that licensees relinquish their licenses after a conviction, just that a waiver is obtained to engage in the business of insurance. There is nothing in the record to indicate whether Robert worked in the business of insurance after his conviction. Robert was convicted on April 25, 2017 and ordered to surrender to the Bureau of Prisons "no earlier than 60 days" to serve a term of three months' imprisonment. Judgment in a Criminal Case attached as Ex. D2 to Cert. of Robert Mania; Shannon Cert. ¶23, Exhibit 15 attached thereto. Robert reported to the Bureau of Prisons in "approximately" July 2017. Cert. of Robert Mania ¶1. There was approximately five months between Robert's conviction and his license expiration.

There is no evidence that Robert was employed in the business of insurance at any point during those five months, and I note that he was imprisoned for three of those months. Accordingly, I REJECT the ALJ's determination that Robert violated N.J.A.C. 11:17E-1.3 and 18 U.S.C. § 1033(e)(2).

Count Three – Engaging in a Scheme to Defraud (All Respondents)

Count Three of the OTSC alleges that by engaging in and admitting to the scheme to defraud the MOBOE, for which Robert pled guilty and was convicted of Mail Fraud, a class 3 felony, and which scheme was conducted through RHM, Robert and RHM violated N.J.S.A. 17:22A- 40(a)(2), (4), (6), (7), (8), and (16); and during the timeframe Robert and RHM engaged in the aforementioned scheme, Heidi was an active officer and a DRLP of RHM, and therefore individually responsible for the insurance-related conduct of RHM, pursuant to N.J.A.C. 11:1-12.2, and therefore additionally liable for the violations of N.J.S.A. 17:22A-40(a)(2), (4), (6), (7), (8), and (16).

The ALJ found that between October 2007 and June 2009 Robert was involved in a scheme to overstate insurance commissions and prevent disclosure of the inflated commissions to the insured. Id. at 15. There is also no dispute that because of the scheme, Robert received payments and distributed inflated commissions and he and RHM received approximately twenty-one commission checks totaling $141,527. Id. at 16. The ALJ concluded that the Department proved by a preponderance of the credible evidence that Robert and RHM participated in the scheme to fraudulently overstate insurance commissions in violation of N.J.S.A. 17:22A-40(a)(2) (violating any insurance law or regulation), (4) (improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business), (6) (convicted of a felony or crime of the fourth degree or higher), (7) (committing any insurance unfair trade practice or

fraud), (8) (fraudulent coercive or dishonest practices, demonstrating incompetence, unworthiness, or financial irresponsibility) and (16) (any fraudulent act). Ibid.

The ALJ also found that from October 2007 to June 2009 when RHM was receiving commission checks from Robert's scheme, Heidi was the DRLP for RHM. Ibid. The ALJ further found that Heidi held a 49 percent ownership interest in RHM between October 2007 and June 2009, when Robert and RHM received twenty-one commission checks as a result of their scheme to overcharge the MOBOE. Id. at 17. The ALJ concluded that Heidi is personally responsible for RHM's actions, including the violations in Count Three while she held an ownership interest of more than ten percent pursuant to N.J.A.C. 11:17A-1.6(c) (owners with an ownership interest of 10 percent or more in the organization shall be held responsible for all insurance related conduct of the organization).

The Respondents argue that the ALJ erred when she did not dismiss Count Three on the grounds of it being outside the Statute of Limitations. Id. at 2. The Respondents argue that the ten-year statute of limitations expired three years before the Department filed the OTSC. Id. at 2-3. The Respondents argue that the statute of limitations should not be extended. Id. at 3. The Department argues that the ALJ properly found that its claims were not barred by the statute of limitations. Department Reply at 4.

A ten-year statute of limitations governs this action. N.J.S.A. 2A:14-1.2(a) (unless otherwise provided by statute, "any civil action commenced by the State shall be commenced within ten years next after the cause of action shall have accrued"); Cumberland Cty. Bd. of Chosen Freeholders v. Vitetta Grp., P.C., 431 N.J. Super. 596, 603 (App. Div. 2013) (N.J.S.A. 2A:14-1.2 "is a statute of limitations governing civil actions commenced by the State or its political subdivisions"). Count Three of the OTSC involves conduct which took place between 2007 and

2009. The OTSC was filed in 2022, more than ten years later. The Department discovered Robert's illegal conduct in April 2016, when Investigator Shannon read news articles about Robert's guilty plea and Robert's attorney confirmed that Robert had pled guilty. Shannon Cert. ¶¶ 20-22.

The discovery rule "provides that in an appropriate case a cause of action will be held not to accrue until the injured party discovers, or by an exercise of reasonable diligence and intelligence should have discovered that he may have a basis for an actionable claim." Swyer, 62 N.J. at 272. "The discovery rule is essentially a rule of equity" that allows a plaintiff relief from a statute of limitations bar. Id. at 272-73. The discovery rule delays the commencement of the limitations period in appropriate cases. Catena v. Raytheon Co., 447 N.J. Super. 43, 52 (App. Div. 2016). In fraud cases, as here, the discovery rule is justified by the victim's lack of awareness of the fraud, which is the wrongdoer's very object. Id. at 54. The rule thus prevents the defendant from benefiting from his own deceit. Ibid. The linchpin of the discovery rule is the unfairness of barring claims of unknowing parties. Mancuso v. Neckles, 163 N.J. 26, 29 (2000).

The date of discovery is when the fraud was or reasonably should have been discovered. Catena, 447 N.J. Super. at 55. Here, the Department discovered Robert's fraud on April 26, 2016, when Investigator Shannon saw news articles and contacted Robert regarding the charges filed against him and his guilty plea. Shannon Cert. ¶21.

I ADOPT the ALJ's determination and find that the allegations in Count Three are not barred under the statute of limitations. I further ADOPT the ALJ's conclusion that Robert and RHM violated N.J.S.A. 17:22A-40(a)(2) (violating any insurance law or regulation), (4) (improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business), (6) (convicted of a felony or crime of the fourth degree or

higher), (7) (committing any insurance unfair trade practice or fraud), (8) (fraudulent coercive or dishonest practices, demonstrating incompetence, unworthiness, or financial irresponsibility) and (16) (any fraudulent act). Initial Decision at 16.

As noted above, during his allocution, Robert testified that from 2007 through 2009, while he was a member of the MOBOE, he and others participated in a scheme to defraud the MOTSD by inflating the commission rate to be paid on the MOTSD's health insurance account and then Robert diverted a portion of the commissions to himself and others. T 31:10-19. In order to conceal this scheme, Robert caused the MOTSD's health insurance provider to mail the annual disclosure statements for its account, which detailed the commission rate and payments to the Associate's Company, to Robert's personal post office box. T 32:25-33:7. Robert's use of his official position to intercept the disclosures to MOTSD from the insurance provider that detailed the rate increases and payments to Cambrian, a company that received commissions diverted by Cotroneo and distributed them to other entities, such as RHM, was critical to the success of the scheme. U.S. attorney letter to Hon. Freda L. Wilson dated April 19, 2017, attached as Exhibit A to the Certification of James A. Plaisted.

The ALJ also found that Heidi is responsible for RHM's actions because she owned 49 percent of RHM between October 2007 and June 2009 when Robert and RHM received 21 commission checks as part of the scheme. Initial Decision at 17. Under N.J.A.C. 11:17A-1.6(c), owners with an ownership interest of 10 percent or more in the organization shall be held responsible for all insurance related conduct of the organization. Accordingly, I ADOPT the ALJ's finding that Heidi is also responsible for RHM's conduct and also violated N.J.S.A. 17:22A-40(a)(2) (violating any insurance law or regulation), (4) (improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance

business), (6) (convicted of a felony or crime of the fourth degree or higher), (7) (committing any insurance unfair trade practice or fraud), (8) (fraudulent coercive or dishonest practices, demonstrating incompetence, unworthiness, or financial irresponsibility) and (16) (any fraudulent act).

Count Four – Failure to Disclose Criminal Prosecution in 2016 License Renewal

Count Four of the OTSC alleges that by failing to report Robert's criminal prosecution on RHM's April 25, 2016 application to renew its producer license, the Respondents violated N.J.S.A. 17:22A-40(a)(1), (2), (4), (8), and (16) and N.J.S.A. 17:22A-47(b).

The ALJ found that on April 25, 2016, Heidi completed an application for license renewal on behalf of RHM, in which she answered "no" to the question of whether "the business entity, or an owner, partner, officer, director, member or manager is currently charged with committing a crime."[12] Initial Decision at 7. Although the Department argued that the Respondents violated the Producer Act five separate times on five renewal applications, the ALJ concluded that RHM and Heidi violated N.J.S.A. 17:22A- 40(a)(1), only on April 25, 2016, shortly after Robert Mania, who was still a DRLP of RHM, was formally charged with mail fraud, and Heidi submitted an application to renew RHM's license that stated otherwise. Id. at 18.

The Department argued in its motion for summary decision and in its Exceptions that the Respondents violated N.J.S.A. 17:22A-40(a)(1) when they submitted five applications to the Department, between June 1, 2012, and April 25, 2016, for renewal of their producer licenses

[12] The second question on the license renewal questionnaire asks, "Has the business entity or any owner, partner, officer, or director of the business entity, or member or manager of a limited liability company, ever been convicted of, or is currently charged with committing a felony or had a judgment withheld or deferred for a felony which has not been previously reported to this insurance department?"

which failed to accurately disclose Robert and RHM's criminal prosecution by the DOJ. Department Exceptions at 2.[13]

The Respondents argue that the doctrine of laches shortens the statute of limitations of Count Four because the attorney who advised Heidi to answer no to this question, the counsel for the party who acquired RHM's assets in 2016, is unavailable because he is retired and no longer lives in New Jersey. Respondents' Exceptions at 3, 9. They argue that Heidi is significantly prejudiced by the unavailability of this witness. Id. at 9. The Department argues that the ALJ properly found that its claims were not barred by the doctrine of laches. Department Reply at 4-5.

The doctrine of laches is an equitable defense. It consists of two elements: inexcusable delay in asserting a right, and prejudice to the respondent as a result of such delay. Allstate Ins. Co. v. Howard Sav. Inst., 127 N.J. Super. 479, 489-491 (Ch. Div. 1974). The underlying policy of the doctrine is to discourage stale claims. County of Morris v. Fauver, 153 N.J. 80, 105 (1998). "Laches in a general sense is the neglect, for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done. More specifically, it is inexcusable delay in asserting a right." Lavin v. Board of Educ. of City of Hackensack, 90 N.J. 145, 151 (1982). The application of laches "to shorten an otherwise permissible period for initiation of litigation" would result in "only the rarest of circumstances

[13] Count Four of the OTSC alleges that the Respondents only violated the Producer Act when they failed to report Robert's criminal prosecution on RHM's April 25, 2016 application to renew its producer license. The Department never moved to amend the pleadings to include the additional four renewal applications: the June 1, 2012 license renewal that Robert completed on behalf of RHM; the September 5, 2012 license renewal that Robert completed on his own behalf; the May 5, 2014 license renewal that Heidi completed on behalf of RHM; or the September 21, 2015 license renewal that Robert completed on his own behalf.

[with] only overwhelming equitable concerns[.]" Millman, 201 N.J. at 422. As noted by the ALJ, the burden is particularly high where the movant seeks to assert laches against a government entity carrying out an essential governmental function in the interest of the public. Initial Decision at 23 (citing Town of Secaucus, 19 N.J. Tax at 27).

I ADOPT the ALJ's determination that laches does not apply to Count Four. There is an applicable statute of limitations of ten years under N.J.S.A. 2A:14-1.2(a), which governs this action. The Respondents argue that the attorney who advised Heidi to answer the question in the negative is retired, no longer lives in New Jersey, and she has been prejudiced by this witness's unavailability. However, witnesses who testify in the OAL may do so by telephone or video, so it is unclear how this witness being retired and living outside of New Jersey is unavailable, as travel would not be necessary. N.J.A.C. 1:1-15.8(e). Further, the Respondents could compel this witness to testify by issuing a subpoena. N.J.A.C. 1:1-11.1. I find that the Respondents have not shown that they have been prejudiced and find that laches does not bar the Department's claims.

The Respondents argue that Heidi was correct in answering "no" to the question regarding if any of RHM's owners, partners, officers, director, members or managers were currently charged with committing a crime because Robert had resigned and severed his connection to RHM in 2012 and the Department was so informed. Respondents' Exceptions at 2. By April 2016, RHM had sold and transferred its assets and was an empty shell. Ibid. The Respondents aver that Heidi was advised by counsel for the entity that purchased RHM to answer "no" to that question since Robert had transferred his ownership of RHM, and filed an unqualified resignation from all offices of RHM with the Department in 2012. Ibid. The Respondents argue that the Department did not update its records when it received Robert's resignation, but that is not proof that Robert remained RHM's DRLP. Ibid.

I find that on April 25, 2016, Heidi completed an application to renew RHM's license where she answered "no" to the question asking if the business entity, owner, partner, officer, director, or member of RHM was currently charged with a felony. Shannon Cert. ¶19, Exhibit 10 attached thereto. Four days earlier, on April 21, 2016, Robert was formally charged by the U.S. attorney by the filing of Criminal Information as Robert had waived indictment. Shannon Cert. ¶17, Criminal Information in U.S. v. Mania, Crim. No. 16-199-01 (FLW) attached as Ex. 12 thereto. I note that effective June 30, 2012, Robert resigned as "Owner, Partner, Officer, Director, or Member of RHM..." Shannon Cert. ¶7, Exhibit 5 attached thereto. Further, by letter dated September 6, 2012 Heidi informed the Department she owned 100 percent of RHM and that Robert had sold his shares to her as of July 1, 2012. Exhibit 5 attached to Shannon Cert. She asked that Robert be removed as "an owner and/or shareholder" of RHM. Ibid. There is no evidence that Robert was an "owner, partner, officer, or director..." of RHM when Heidi submitted the renewal application on RHM's behalf on April 25, 2016. Although Robert was still listed as the DRLP, a DRLP is not necessarily an officer. A business entity must name a licensed producer or producers to be responsible for the business entity's compliance with the insurance laws, rules and regulations in order to be licensed as an insurance producer. N.J.S.A. 17:22A-32b(2). However, a DRLP is not required to be an officer. Officers of a corporation consist of a president, one or more vice presidents, a secretary, a treasurer, and any other officers that may be described in the bylaws. N.J.S.A. 14A:6-15(1).

Accordingly, I REJECT the ALJ's finding that RHM and Heidi violated N.J.S.A. 17:22A-40(a)(1) (provide incorrect, misleading, incomplete information in the license application), on April 25, 2016, shortly after Robert Mania was formally charged with mail fraud, and Heidi submitted an application to renew RHM's license that stated otherwise. Id. at 18. I ADOPT the

ALJ's finding that the Respondents did not violate the Producer Act on the following applications: the June 1, 2012 license renewal that Robert completed on behalf of RHM; the September 5, 2012 license renewal that Robert completed on his own behalf; the May 5, 2014 license renewal that Heidi completed on behalf of RHM; or the September 21, 2015 license renewal that Robert completed on his own behalf. At the time of those applications, Robert had not been charged. Robert was not charged until April 21, 2016 when the U.S. attorney filed the Criminal Information, after these renewal applications were submitted.

The ALJ did not address the remaining violations in Count Four of the OTSC. Accordingly, I MODIFY as to N.J.S.A. 17:22A-40(a)(2) (violating any insurance law or regulation), (8) (fraudulent coercive or dishonest practices, demonstrating incompetence, unworthiness, or financial irresponsibility) and (16) (any fraudulent act) and find that Heidi and RHM did not violate these regulations when Heidi answered "no" to the question asking if the business entity, owner, partner, officer, director, or member of RHM was currently charged with a felony on RHM's April 25, 2016 license renewal application.

Count Four of the OTSC also alleges that the Respondents' conduct is in violation of N.J.S.A. 17:22A-40(a)(4), which prohibits improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business. The factual finding related to Count Four that Heidi answered "no" to the question asking if the business entity, owner, partner, officer, director, or member of RHM was currently charged with a felony on RHM's April 25, 2016 license renewal application does not support the conclusion that her conduct as alleged in Count Four is a violation of N.J.S.A 17:22A-40(a)(4). Accordingly, I MODIFY the ALJ's determination and find that Heidi and RHM did not violate N.J.S.A 17:22A-40(a)(4).

The OTSC also charges that the Heidi's and RHM's conduct is in violation of N.J.S.A. 17:22A-47(b), which obligates licensed producers to report to the commissioner any criminal prosecution of the producer taken in any jurisdiction within 30 days of the initial pretrial hearing date. No evidence was presented regarding if or when an initial pretrial hearing date was held. Accordingly, I MODIFY the ALJ's determination and find that Heidi and RHM did not violate N.J.S.A. 17:22A-47(b).

The OTSC charges that all Respondents are liable for the April 25, 2016 renewal application. The ALJ found only that RHM and Heidi were responsible, and the Department did not take exception to this finding. Further, in its moving papers the Department asks that the ALJ find that Heidi committed two violations of N.J.S.A. 17:22A-40(a)(1), for the renewal applications she submitted on RHM's behalf on May 5, 2014 and April 25, 2016. The Department did not ask that the ALJ find that Robert is also responsible for these applications in their moving papers. Accordingly, I make no findings as to Robert's culpability for the violations in Count Four.

PENALTY AGAINST RESPONDENTS

Respondents' Producer Licenses

With respect to the appropriate action to take against Robert's insurance producer license, I find that the record is more than sufficient to support license revocation and compels the revocation of Robert's license. Accordingly, I ADOPT the ALJ's recommendation that Robert's insurance producer license be revoked due to violations of the Producer Act. However, I MODIFY the ALJ's recommendation that Heidi's and RHM's licenses should be revoked and suspend their licenses for six months.

The Commissioner is charged with the duty to protect the public welfare and to instill public confidence in both insurance producers and the industry as a whole. Commissioner v.

Fonseca, OAL Dkt. No. BKI 11979-10, Initial Decision (08/15/11), Final Decision and Order (12/28/11) (citing In re Parkwood, 98 N.J. Super. 263 (App. Div. 1967)). An insurance producer collects money from insureds and acts as a fiduciary to both the consumers and the insurers they represent. Accordingly, the public's confidence in a licensee's honesty, trustworthiness, and integrity are of paramount concern. Ibid. The nature and duty of an insurance producer "calls for precision, accuracy and forthrightness." Fortunato v. Thomas, 95 N.J.A.R. (INS) 73 (1993). A producer is held to a high standard of conduct, and should fully understand and appreciate the effect of fraudulent or irresponsible conduct on the insurance industry and on the public.

I find that revocation of Robert's insurance producer license is warranted. As noted above, on April 25, 2017, Robert was convicted of mail fraud in violation of 18 U.S.C. §§ 1341 and 2. Judgment in a Criminal Case attached as Ex. D2 to Cert. of Robert Mania; Shannon Cert. ¶23, Exhibit 15 attached thereto. In or about June of 2007, with Robert's knowledge and approval, Cotroneo instructed the MOTSD's health insurance carrier to increase the commission rate from four percent to five percent and to pay the additional one percent of the commissions to a company controlled by an Associate of the Insurance Broker. T 31:25-32:7.

In order to conceal this scheme, Robert caused the MOTSD's health insurance provider to mail the annual disclosure statements for its account, which detailed the commission rate and payments to the Associate's Company, to Robert's personal post office box. T 32:25-33:7. Robert's use of his official position to intercept the disclosures to MOTSD from the insurance provider that detailed the rate increases and payments to Cambrian, a company that received commissions diverted by Cotroneo and distributed them to other entities, such as RHM, was critical to the success of the scheme. U.S. attorney letter to Hon. Freda L. Wilson dated April 19, 2017, attached as Exhibit A to the Certification of James A. Plaisted.

While Robert may not have pled guilty to overcharging commissions, he knew of, and approved of, the increased commissions. Robert participated in and benefited from a scheme where commissions for insurance were increased without the MOTSD's knowledge. Robert then used his official position to intercept and conceal disclosures which would have alerted the MOTSD that it was paying two brokers a commission rate of five percent, rather than paying one broker a commission of four percent. Accordingly, I find that revocation of Robert's insurance producer license is appropriate.

However, I do not find that revocation of Heidi's and RHM's licenses is appropriate. While Heidi, who owned 49 percent of RHM between October 2007 and June 2009, is responsible for RHM's conduct pursuant to N.J.A.C. 11:17A-1.6(c), she was a passive actor, and played no part in Robert's fraud. Similarly, although Robert used RHM to funnel money to himself and others, RHM was never charged. Accordingly, I find that a six-month license suspension is appropriate as to Heidi and RHM.

Although Robert's and RHM's licenses are expired, the Commissioner retains his authority to enforce the provisions of the Producer Act against any person charged with a violation. N.J.S.A. 17:22A-47(d). Accordingly, although Robert and RHM are no longer licensed insurance producers, it is appropriate to take action against their licenses and levy appropriate fines.

Application of the Rehabilitated Convicted Offender Act

The Respondents argue that the ALJ erred in her failure to recognize that when the Department denied the renewal of Robert's insurance producer license in October 2017, it subjected him to a form of revocation. Respondents' Exceptions at 9. The Respondents argue that Robert is entitled to a hearing as to whether he is a rehabilitated offender who should be permitted to reapply for his license. Ibid.

As discussed above, pursuant to 18 U.S.C. §1033, no person having been convicted of a felony involving dishonesty or a breach of trust shall engage in the business of insurance without having first obtained the written consent of the Commissioner or his designee. In order to satisfy this requirement, said person must apply for a waiver pursuant to N.J.A.C. 11:17E-1.1 to -1.7. The letter denying Robert's license renewal application advised Robert that he must have written consent from the Commissioner prior to working in the insurance industry, and attached the application to apply for a waiver under 18 U.S.C. §1033. Letter from Joseph. A. McDougal dated October 18, 2017, attached as Exhibit E to the Certification of James A. Plaisted. The letter also informed Robert that he could request a hearing on the decision to deny his license renewal application. Ibid. Robert never appealed the denial and did not submit a waiver application under 18 U.S.C. §1033. Certification of Joseph A. McDougal ¶¶ 5-6.

The Rehabilitated Convicted Offenders Act ("RCOA"), N.J.S.A. 2A:168A-1 to -16, applies to an application for a license, not the revocation of an existing license. N.J.S.A. 2A:168A-2. Robert did not appeal the denial of his license renewal and the RCOA is inapplicable to the determination of whether Robert's license should be revoked.

Application of N.J.S.A. 45:1-21.5

Although the RCOA does not apply to license revocation proceedings, N.J.S.A. 45:1-21.5 does apply to license revocation proceedings. However, the ALJ did not consider the factors at N.J.S.A. 45:1-21.5. Accordingly, I MODIFY the ALJ's decision to consider whether the revocation of Robert's license is appropriate under N.J.S.A. 45:1-21.5.

Pursuant to N.J.S.A. 45:1-21.5,

> an entity shall not disqualify a person from obtaining or holding any...license issued by an entity solely because the person has been convicted of or engaged in acts constituting any crime or offense, unless the crime or offense has a direct or substantial relationship to the activity regulated by the entity or is of a nature such

> that...licensure of the person would be inconsistent with the public's health, safety, or welfare.

N.J.S.A. 45:1-21.5 lists four factors to consider when making this determination.

The first factor at N.J.S.A. 45:1-21.5(a)(1) is the nature and seriousness of the crime and the passage of time since its commission. As noted above, between 2007 and 2009, Robert participated in and benefited from a scheme where commissions for insurance were increased without the MOTSD's knowledge. Robert knew of, and approved of, the increased commissions. Robert then used his official position to intercept and conceal disclosures which would have alerted the MOTSD that it was paying two brokers a commission rate of five percent, rather than paying one broker a commission of four percent. On April 25, 2017, Robert was convicted of mail fraud in violation of 18 U.S.C. §§ 1341 and 2. Judgment in a Criminal Case attached as Ex. D2 to Cert. of Robert Mania; Shannon Cert. ¶23, Exhibit 15 attached thereto. This factor weighs in favor of disqualifying the Respondent from licensure because of the seriousness of the offense and the proximity in time.

The second factor at N.J.S.A. 45:1-21.5(a)(2) is the relationship of the crime or offense to the purposes of regulating the profession or occupation regulated by the entity. As noted above, an insurance producer acts as a fiduciary to both the consumers and the insurers they represent. Accordingly, the public's confidence in a licensee's honesty, trustworthiness, and integrity are of paramount concern. This factor also weighs in favor of disqualifying Robert from licensure because of the high standards of conduct expected of insurance producers.

The third factor at N.J.S.A. 45:1-21.5(a)(3) is any evidence of rehabilitation in the time following the prior conviction that may be made available. Here, Robert provided "substantial and useful assistance to the investigation and prosecution of" other individuals. U.S. attorney letter to Hon. Freda L. Wilson dated April 19, 2017, attached as Exhibit A to the Certification of James

A. Plaisted. The ALJ also notes that Robert has paid more than $600,000 in restitution. Initial Decision at 27. He has also stopped drinking. Cert. of Heidi Mania ¶15. I find that Robert was able to show some evidence of rehabilitation and this factor weighs in favor of not disqualifying him from holding an insurance producer license.

The final factor at N.J.S.A. 45:1-21.5(a)(4) is the relationship of the crime or offense to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation regulated by the entity. As stated above, insurance producers are held to a high standard of conduct and the public's confidence in a licensee's honesty, trustworthiness, and integrity are of paramount concern. Robert's conviction for mail fraud is directly related to his fitness for licensure as an insurance producer. Further, it is especially concerning that Robert used his official position to intercept the disclosures to MOTSD from the insurance provider. U.S. attorney letter to Hon. Freda L. Wilson dated April 19, 2017, attached as Exhibit A to the Certification of James A. Plaisted. This factor also weighs in favor of disqualifying Robert from licensure because of the high standards of conduct expected of insurance producers and the relationship of fraud to those standards.

Upon balancing the factors at N.J.S.A. 45:1-21.5, I find that revoking Robert's license is appropriate. Robert's conduct casts doubt upon his ability to meet the high standards that insurance producers are expected to meet.

Under N.J.S.A. 45:1-21.5(b), after a person is disqualified from licensure, the entity shall notify the person in writing of the grounds for disqualification, the earliest date they may reapply for licensure, and that additional evidence of rehabilitation may be considered upon reapplication.

Under N.J.S.A. 45:1-21.5(b)(1), Robert must be notified for the grounds for disqualification. Robert is disqualified from licensure due to his conviction of mail fraud and the

underlying conduct where he participated in and benefited from a scheme where commissions for insurance were increased without the MOTSD's knowledge. Robert knew of, and approved of, the increased commissions. Robert then used his official position to intercept and conceal disclosures from the MOTSD.

Under N.J.S.A. 45:1-21.5(b)(2), Robert must be notified of the earliest date that he may apply for licensure. Robert may apply for a producer license five years from the date of this Final Order revoking his insurance producer license. N.J.A.C. 11:17D-2.7.

Lastly, Robert must be notified that additional evidence of rehabilitation may be considered if he applies for licensure. Evidence of rehabilitation may include the absence of any misconduct over a period of intervening years and a particularly productive use of one's time subsequent to the misconduct. In re Matthews, 94 N.J. 59, 82 (1983) (citations omitted). Evidence of rehabilitation may include, but is not limited to: enrollment in school or job training, maintaining steady employment, volunteer work, letters from probation officers indicating that probation has been successfully completed without any violations, letters of recommendation from people aware of the applicant's misconduct who specifically consider the individual's fitness in light of that behavior, and no further involvement with the criminal justice system.

Monetary Penalties Against the Respondents

Robert was found liable for being convicted of mail fraud in violation of 18 U.S.C. §§1341 and 2 in connection with a scheme from which Robert benefited financially where commissions for insurance were increased without the MOTSD's knowledge. Robert knew of, and approved of, the increased commissions. Robert then used his official position to intercept and conceal disclosures from the MOTSD. From October 2007 to June 2009, Robert received over $370,000 in commissions on the MOTSD's account and he did not disclose the receipt of these funds to

either the MOBOE or the MOTSD. Robert and RHM violated N.J.S.A. 17:22A-40(a)(2), (4), (6), (7), (8), and (16). Heidi, as 49 percent owner of RHM, is liable for RHM's insurance related conduct pursuant to N.J.A.C. 11:17A-1.6(c).

The Commissioner has broad discretion in determining sanctions for violations of the laws he is charged with administering. In re Scioscia, 216 N.J. Super. 644, 660 (App. Div. 1987). The penalties set forth in the Producer Act "are expressions by the Legislature that serve a distinct remedial purpose." Commissioner v. Strandskov, OAL Dkt. No. BKI 03451-07, Initial Decision (09/25/08), Final Decision and Order (02/04/09). The Commissioner may levy penalties against any person violating the Producer Act, not exceeding $5,000 for the first offense and not exceeding $10,000 for each subsequent offense. N.J.S.A. 17:22A-45(c). In addition, the Commissioner may order reimbursement of the costs of investigation and prosecution for violations of the Producer Act. Ibid.

As stated by the ALJ, under Kimmelman, 108 N.J. at 137-139, certain factors must be examined when assessing administrative monetary penalties that may be imposed pursuant to the Producer Act.

The first Kimmelman factor addresses the good faith or bad faith of the violator. The ALJ found that Robert could have refused to get involved with the scheme or alerted the authorities before he was contacted by the FBI. Initial Decision at 26-27. I agree and find that Robert acted in bad faith when he approved the increased commissions and used his official position to intercept and conceal disclosures which would have alerted the MOTSD that it was paying a higher commission rate. This factor weighs in favor of a higher penalty as to Robert. I find that this factor is neutral as to Heidi and RHM, as they were passive actors in Robert's fraud.

The second Kimmelman factor is the ability of the respondent to pay the penalties imposed. Respondents who claim an inability to pay civil penalties bear the burden of proving their incapacity. Commissioner v. Shah, OAL Dkt. No. BKI 11903-05, Initial Decision (04/15/08), Final Decision and Order (09/02/08). The ALJ stated that Respondents argued that they have already repaid more than $600,000 in restitution, accrued tax penalties when they liquidated their 401K accounts, and are currently on a payment plan with the New Jersey Division of Taxation. Initial Decision at 27. The ALJ noted that the Respondents did not provide evidence of their finances and of their expenses. Ibid. I find that this factor is neutral as to the Respondents' ability to pay an administrative penalty.

The third Kimmelman factor relates to the profits obtained. The greater the profits an individual is likely to obtain from illegal conduct, the greater the penalty must be if penalties are to be an effective deterrent. Kimmelman, 108 N.J. at 138. The ALJ stated that although Robert and RHM received twenty-one commission checks totaling $141,527, most of the funds received by RHM were funneled to other persons as part of the conspiracy. Initial Decision at 27. The ALJ did not indicate how much profit Robert actually retained, and there is no evidence in the record regarding how much of the commission checks were funneled to others, and how much was retained by the Respondents. I find that this factor weighs in favor of a higher penalty. Although the record is unclear regarding the actual profit the Respondents obtained, they all benefitted financially from the scheme.

The fourth Kimmelman factor addresses the injury to the public. The Commissioner is charged with the duty to protect the public welfare and to instill public confidence in both insurance producers and the insurance industry. The ALJ found that there was injury to Cigna, the company that issued the insurance policies and paid inflated commissions. Initial Decision at 27. Further,

the MOBOE was injured because Robert, an elected official who was sworn to act in its best interests, took advantage of his position to enrich himself and his company, RHM, and assisted in a wider fraudulent conspiracy. Ibid. The ALJ found that the need to maintain public faith in insurance producers weighs in favor of penalizing Respondents. Ibid. I agree that this factor weighs in favor of a higher administrative penalty. Robert attempts to minimize his role in the conspiracy to that of simply non-disclosure and points out that he recused himself from voting on insurance matters as a member of the MOBOE. However, this ignores that Robert used his elected position to hide the inflated commissions that he and the other Respondents were benefitting financially from. I find that this factor weighs in favor of a higher penalty.

The fifth Kimmelman factor to be examined is the duration of the illegal activity. The Court in Kimmelman found that greater penalties are necessary to incentivize wrongdoers to cease their illegal conduct. Kimmelman, 108 N.J. at 139. The longer the illegal conduct, the more significant civil penalties should be assessed. Ibid. The ALJ found that Robert overcharged commissions on policies sold to the MOBOE for three years. Initial Decision at 27. It then took Robert four years to notify the Commissioner that charges would be filed against him. Id. at 27-28. Here, I agree that Robert participated in a scheme to overcharge commissions on policies from June 2007 to June 2009, for two years. He funneled money through RHM, and Heidi is responsible for RHM's conduct because she owned over ten percent of RHM during this time. N.J.A.C. 11:17A-1.6(c). This weighs in favor of a higher penalty.

The sixth factor contemplated in Kimmelman is the existence of criminal actions and whether a civil penalty may be unduly punitive if other sanctions have been imposed. A large civil penalty may be unduly punitive if other sanctions have been imposed for the same violation Kimmelman, 108 N.J. at 139. The ALJ found that Robert has served jail time, and paid

considerable penalties for violations of federal criminal statutes. Initial Decision at 28. The ALJ found that this factor weighs in the Respondents' favor. Ibid. I agree that this factor mitigates against a higher penalty as to Robert. However, I find that a larger penalty would not be unduly punitive as to RHM and Heidi because they have not faced other sanctions for the violations.

The final factor examined in Kimmelman is previous relevant regulatory and statutory violations of the respondent, and if past penalties have been insufficient to deter future violations. The ALJ found that on May 5, 2014, Robert and RHM entered into Consent Order No. E14-53, in which they admitted to violating N.J.S.A. 17:22A-40(a)(2) and (8), and N.J.A.C. 11:17A- 1.3(d), by permitting an employee of RHM to conduct business in New Jersey through negotiation to procure an insured prescription drug plan for a proposed application, when that employee was not licensed as an insurance producer, and paid a $7,500 penalty. Initial Decision at 6, 28. I agree with the ALJ that RHM entered into Consent Order No. E14-53 with the Department and admitted to allowing an unlicensed person to transact the business of an insurance producer between May 31, 2011 and June 30, 2012. Shannon Cert. ¶26 and Exhibit 16 attached thereto. Robert signed the Consent Order on April 11, 2014 and indicated that his title was "Principal." It is unclear why Robert signed this Consent Order and indicated that his title was "Principal" when he had resigned as "Owner, Partner, Officer, Director, or Member of RHM..." effective on June 30, 2012. Shannon Cert. ¶7, Exhibit 5 attached thereto. Nevertheless, I agree that this factor weighs in favor of a higher penalty as to Robert and RHM. The Department argues that this shows that Heidi did not have an "unblemished record." Department Reply at 3. However, she was not a party to the Consent Order. [14] Further, it is also unclear why only RHM was charged, and neither Robert nor Heidi were charged even though they were DRLPs and owners between May 31, 2011 and June

[14] The Order to Show Cause is not part of the record.

30, 2012 when the conduct at issue in the Consent Order had occurred. I find that this factor mitigates against a higher penalty as to Heidi.

After weighing the Kimmelman factors, I find that a penalty of $5,000 is appropriate as to Robert for Count Two of the OTSC. I also find that the Respondents are jointly and severally liable for $10,000 as to Count Three of the OTSC. Robert was convicted of mail fraud for his participation in a scheme to defraud the MOTSD by inflating the commission rate to be paid on the MOTSD's health insurance account and then diverting a portion of the commissions to himself and others. In order to conceal this scheme, Robert used his official position to cause the MOTSD's health insurance provider to mail the annual disclosure statements for its account, which detailed the commission rate, to Robert's personal post office box. Although Heidi was a passive participant in this scheme, she, as 49 percent owner of RHM during the time at issue, is responsible for RHM's part. Further, because she shared a bank account with Robert, she also benefitted financially. Moreover, these penalties demonstrate the appropriate level of opprobrium for such misconduct, and will serve to deter future misconduct by the Respondents and the industry as a whole.

Pursuant to N.J.S.A. 17:22A-45(c), it is also appropriate to impose reimbursement of the costs of investigation. The ALJ recommended that the Respondents pay costs of investigation in the amount of $1,612.50. Initial Decision at 28. I ADOPT the ALJ's determination and find that the Respondents are jointly and severally liable for the costs of investigation in the amount of $1,612.50, which is consistent with the amount in the Certification of Investigator Shannon. Shannon Cert. ¶¶27-30 and Ex. 17 attached thereto.

CONCLUSION

Having reviewed the Initial Decision, the parties' exceptions and replies, and the entire record herein, I hereby ADOPT the Findings and Conclusions as set forth in Initial Decision, except as modified herein. Specifically, I REJECT the ALJ's determination that the Department proved the violations in Count One of the OTSC. As to Count Two, I ADOPT the ALJ's conclusions and hold that the Department proved that Robert violated N.J.S.A. 17:22A-40(a)(2), (6), and (7). I MODIFY and hold that Robert also violated N.J.S.A. 17:22A-40(8) and (16). I REJECT the ALJ's finding that the Department proved that Robert also violated N.J.A.C. 11:17E-1.3 and 18 U.S.C. § 1033(e)(2). As to Count Three, I ADOPT the ALJ's determination that the Department proved that the Respondents violated N.J.S.A. 17:22A-40(a)(2), (4), (6), (7), (8), and (16). As to Count Four, I REJECT the ALJ's conclusions and hold that the Department did not prove that Heidi and RHM violated N.J.S.A. 17:22A-40(a)(1). I MODIFY and hold that Heidi and RHM did not violate 17:22A-40(a)(2), (4), (8), and (16), or N.J.S.A. 17:22A-47(b).

I MODIFY the recommended civil monetary penalty and ORDER that Robert is responsible for an administrative penalty in the amount of $5,000 for his violations in Count Two of the OTSC. I further MODIFY and ORDER that the Respondents are jointly and severally liable for $10,000 for the violations in Count Three of the OTSC. Further, I ADOPT the ALJ's determination and ORDER that the Respondents are jointly and severally liable for $1,612.50 in costs of the investigation.

Finally, I ADOPT the ALJ's conclusion that Robert's insurance producer license be revoked and hereby ORDER the revocation of Robert's license effective as of the date of this Final Order and Decision. However, I MODIFY the ALJ's conclusion that Heidi's and RHM's

insurance producer licenses be revoked and ORDER that their licenses be suspended for six months.

It is so ORDERED on this 22ND day of MAY 2024.

Justin Zimmerman
Acting Commissioner

jd Mania RHM FO/Final Orders-Insurance