

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DOCKET NO.: BKI-00501-14
AGENCY DOCKET NO.: OTSC #E13-100

RICHARD J. BADOLATO, ACTING)
COMMISSIONER, NEW JERSEY)
DEPARTMENT OF BANKING)
AND INSURANCE,)

FINAL DECISION AND ORDER

Petitioner)

v.)

BRADFORD M. SCACCETTI AND)
ALL CLAIMS ADJUSTER, LLC.,)

Respondents)

This matter comes before the Commissioner of Banking and Insurance (“Commissioner”)¹ pursuant to the authority of N.J.S.A. 52:14B-1 et seq., N.J.S.A. 17:1-15, the New Jersey Public Adjusters’ Licensing Act, N.J.S.A. 17:22B-1 et seq. (“Public Adjusters’ Act”), the Trade Practices Act, N.J.S.A. 17:29B-1 et seq., and all powers expressed or implied therein, for the purpose of reviewing the May 18, 2015 Order of Partial Summary Decision (“Partial Summary Decision” or “PSD”) of Administrative Law Judge Elia A. Pelios (“ALJ”), which granted in part and denied in part a Motion for Summary Decision made by the Department of Banking and Insurance (“Department”), and the January 7, 2016 Initial Decision

¹ Pursuant to R. 4:34-7, Acting Commissioner Richard J. Badolato, has been substituted as the current Commissioner in the caption.

("Initial Decision") of the ALJ. The ALJ recommended: the revocation of the public adjuster licenses of Respondents Bradford M. Scaccetti ("Scaccetti") and All Claims Adjuster, LLC ("All Claims" and, collectively as "Respondents"); imposition against the Respondents of a penalty totaling \$100,000; and reimbursement by the Respondents of the Department's costs of investigation totaling \$425.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On September 19, 2013, the Department issued Order to Show Cause No. E13-100 ("OTSC") against Respondents seeking: the suspension or revocation of Respondents' public adjuster licenses pursuant to N.J.S.A. 17:22B-14; reimbursement of the Department's costs of investigation and prosecution pursuant to N.J.S.A. 17:22B-17; and the imposition of monetary fines and penalties for alleged violations of the Public Adjusters' Act and Trade Practices Act pursuant to N.J.S.A. 17:22B-14 and -17 and N.J.A.C. 11:1-37.14(b). In the OTSC, the Department alleges that the Respondents engaged in the following activities in violation of the insurance laws of this State:

Count One - In the aftermath of Superstorm Sandy, while engaging in the business of a public adjuster, Respondents circulated an advertisement and solicitation to the general public that contained untrue, deceptive, or misleading information, including failing to identify Respondents as public adjusters and misrepresenting that the recipients of the solicitation were insured by Respondents and needed to contact Respondents regarding a specific "Flood Claim," with a date of loss of October 29, 2012, the date of Superstorm Sandy, in violation of N.J.S.A. 17:22B-14a(1) and (4), N.J.S.A. 17:29B-3, and N.J.A.C. 11:1-37.14(a)1, 2, 3, 4, and 17;

Count Two - In or about March 2013, Respondents failed to cooperate with an investigation by the Commissioner by failing to timely respond to the Department's inquiries, in violation of N.J.S.A. 17:22B-14a(1) and (4), and N.J.A.C. 11:1-37.14(a)1, 2, and 11;

Count Three - While engaging in the business of a public adjuster, Respondents circulated an advertisement and solicitation in the form of a letter to the general public which indicated that Respondents had confidential information regarding the recipients' "Hurricane Sandy Claim" despite Respondents having no knowledge of any particular claim filed by recipients, and despite notice from the Department that their advertisements and solicitations to the general public contained untrue, deceptive, or misleading information, in violation of N.J.S.A. 17:22B-14a(1) and (4), N.J.S.A. 17:29B-3, and N.J.A.C. 11:1-37.14(a)1, 2, 3, 4, and 17;

Count Four - On or about December 7, 2011, Scaccetti committed a fraudulent or dishonest act in the application to the Commissioner for his individual public adjuster license, by stating that he had not been named or involved as a party in an administrative proceeding regarding any professional or occupational license by failing to disclose a November 2007 Florida Administrative Proceeding against his Florida public adjuster license, in violation of N.J.S.A. 17:22B-14a(1), (2), (3), and (4) and N.J.A.C. 11:1-37.14(a)3, 6, and 17; and

Count Five - On or about November 16, 2012, Respondents committed a fraudulent or dishonest act in the application to the Commissioner for All Claims' business entity public adjuster license, in that Respondents listed Scaccetti as All Claims' sole designated responsible licensed public adjuster ("DRLP") and sole partner, and stated that Scaccetti had not been named or involved as a party in an administrative proceeding regarding any professional or occupational license and failed to disclose the November 2007 Florida Administrative Proceeding against Scaccetti's Florida public adjuster license, in violation of N.J.S.A. 17:22B-14a(1), (2), (3), and (4) and N.J.A.C. 11:1-37.14(a)3, 6, and 17.

On November 18, 2013, Respondents timely filed an answer and request for an administrative hearing. Thereafter, the Commissioner transmitted the contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., to the Office of Administrative Law ("OAL"). On December 1, 2014, the Department filed a Motion for Summary Decision. On

January 13, 2015, Respondents filed a brief in Opposition to said Motion. On January 15, 2015, the Department filed a reply to Respondents' Opposition.

On May 18, 2015, the ALJ issued an Order of Partial Summary Decision, granting the Department's Motion for Summary Decision as to Counts One through Five of the OTSC and as to the reimbursement of the costs of investigation and prosecution. The ALJ, however, denied the Department's Motion for Summary Decision as to the issues of license revocation and the imposition of a monetary penalty against Respondents and ordered the matter to proceed to a hearing on those issues.

A hearing was held on October 5, 2015 as to those remaining issues. The only witness to testify at the hearing was Scaccetti. After the hearing, on November 11, 2015, Respondents submitted a request that the ALJ reconsider his grant of summary decision concerning Scaccetti's failure to cooperate with the investigation based on newly discovered evidence. The Department filed a response on November 12, 2015, arguing that Respondents' assertions are contradicted by the record.² The record closed on November 23, 2015.³ On January 7, 2016, the ALJ rendered the Initial Decision, recommending that Respondents' public adjuster licenses be revoked, and that Respondents pay to the Department civil penalties in the amount of \$100,000.

ALJ'S FINDINGS OF FACT

In the Order of Partial Summary Decision, the ALJ noted that the "record reflects that respondents do not challenge or contest the underlying facts which make the basis of the order to

² The record is silent as to the resolution of this request for reconsideration. The Initial Decision does not address the request; thus, it is addressed in this Final Decision and Order.

³ The Initial Decision states that the record was held open to allow for written summations by the parties and was closed on November 23, 2015. However, no written summations are contained in the record.

show cause. In fact most material facts are admitted.” PSD at 7-8. In the Initial Decision, the ALJ sustained that determination. Initial Decision at 5. Accordingly, the following are the undisputed facts as found by the ALJ.

Count 1: December 2012 Advertisements/Solicitations

On December 5, 2012, Respondents mailed 1,886 letters (“December 2012 Letters”) to New Jersey residents that used the template attached as Exhibit A to the OTSC. PSD at 2. The December 2012 Letters were sent to “randomly selected property owners in areas affected by” Superstorm Sandy. Ibid. The December 2012 Letters did not state that Respondents were public adjusters. However, the letters constituted a solicitation intending to generate public adjusting business. PSD at 3. The December 2012 Letters state they are from a “Claims Department” and that Respondents possess records indicating that the recipients have an uninspected flood claim resulting from Superstorm Sandy. Ibid. Respondents did not possess information that the recipients of the December 2012 Letters had a flood claim or an uninspected flood claim resulting from Superstorm Sandy. Ibid. The December 2012 Letters stated that the recipients’ Superstorm Sandy Claim may be denied if a proper proof of loss was not submitted by December 28, 2012. Ibid. The December 2012 Letters “create[d] confusion” among recipients. Ibid.

Count 2: Failure to Cooperate with a Department Investigation

In February 2013, the Department requested information from Respondents related to the December 2012 Letters. Ibid. On March 22, 2013, the Department again requested information related to Respondents’ December 2012 Letters. Ibid. The Department has no record of receiving the requested information from Respondents. PSD at 4.

Count 3: August 2013 Advertisements/Solicitations

On or about August 21, 2013, Respondents sent approximately 500 letters (“August 2013 Letters”) that used the template attached as Exhibit B to the OTSC, intending to generate public adjusting business. Ibid. The August 2013 Letters state that the recipients’ “Hurricane Sandy Claim may have been underpaid,” that an “oversight” can result in commercial roofs damaged by Superstorm Sandy being denied full roof replacement, and that this “oversight” can be corrected by contacting Respondents. Ibid. Respondents did not possess any information that the recipients of the August 2013 Letters had an insurance claim arising from Superstorm Sandy, that they had been denied a full roof replacement for a claim arising from Superstorm Sandy, or that they had been denied a full roof replacement as a result of an “oversight.” Ibid.

In total, Respondents received \$19,626.77 in fees from business generated via the December 2012 and August 2013 Letters. PSD at 5.

Count 4: Scaccetti’s Public Adjuster License Application

In November 2007, Scaccetti was the subject of a Florida Department of Financial Services administrative proceeding, Case No. 92976-07-AG. Ibid. On November 5, 2007, Scaccetti signed a Consent Order settling the Florida administrative proceeding wherein he agreed to pay a \$1,500 administrative penalty. Ibid. On December 7, 2011, Scaccetti applied for a New Jersey public adjuster license wherein he falsely answered “No” in response to whether he had “ever been involved in an administrative proceeding regarding any professional or occupational license or registration.” Ibid.

Count 5: All Claims’ Public Adjuster Application

At all relevant times, Scaccetti was the sole partner and sole sub-licensee of All Claims. Ibid. On November 16, 2012, Respondents applied for a New Jersey business entity public

adjuster license for All Claims. Ibid. On the November 16, 2012 application, Respondents falsely answered “No” in response to whether “any owner, partner, officer or director, or manager of [the] limited liability company, [has] ever been named or involved as a party in an administrative proceeding.” PSD at 5-6.

The Department incurred \$425 in costs in investigating and prosecuting this matter. PSD at 6.

ALJ’s LEGAL ANALYSIS AND CONCLUSIONS AS TO THE ALLEGED CONDUCT

The ALJ noted that the Department bears the burden of proving the allegations in the OTSC by a preponderance of the competent, relevant and credible evidence. (citing Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982)). Ibid. The evidence must be such as to lead a reasonably cautious mind to a given conclusion. (citing Bornstein v. Metropolitan Bottling Co., 26 N.J. 263 (1958)). Ibid. 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. (citing State v. Lewis, 67 N.J. 47 (1975)). Ibid.

Motion for Summary Decision

The ALJ stated that N.J.S.A. 52:14B-9 provides a party the opportunity for a hearing at which he may present evidence and argument on all issues involved. Ibid. Such matters, however, may be subject to summary decision if the papers 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. (citing N.J.A.C. 1:1-12.5(b)). Ibid. The ALJ noted that the standard for granting summary decision is found in Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995). Ibid. The standard requires the motion judge to determine whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must

prevail as a matter of law. (citations omitted). Id. at 7. To determine whether there exists a genuine issue of material fact that precludes summary decision "requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party." (citations omitted). Ibid. The ALJ found further guidance in R. 4:46-2:

An issue of fact is genuine if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issues to the trier of fact. Ibid.

The ALJ found that Respondents do not challenge or contest the facts underlying the allegations in the OTSC. Ibid. The ALJ found that most material facts are admitted. Id. at 7-8. Based upon the standards set forth above and these findings, the ALJ concluded that the Department's Motion for Summary Decision should be granted as to Counts One through Five because "there are no issues of material fact that warrant a hearing." PSD at 8. Additionally, the ALJ noted that the Respondents "do not raise any genuine issue as to the reasonableness" of the \$425 sought by the Department as reimbursement for the costs of investigation and prosecution in connection with this matter. Ibid. The ALJ recognized that, in support of those costs, the Department submitted a certification of investigation costs that details the time spent on the investigation and/or prosecution. Ibid. Therefore, the ALJ granted the Department's Motion for Summary Decision with respect to those costs. Ibid.

In the Order for Partial Summary Decision, the ALJ determined that there were genuine issues as to the appropriate monetary penalty under the circumstances, and as to whether revocation of Respondents' public adjusters' licenses is appropriate. Ibid. Accordingly, the ALJ

denied the Department's Motion for Summary Decision with respect to those issues and a hearing was conducted. PSD at 9.

Testimony of Respondent Scaccetti

A hearing was held on October 5, 2015, during which Scaccetti was the only witness to testify. Initial Decision at 2. The ALJ provided a summary of Respondent Scaccetti's testimony in the "Factual Discussion" of the Initial Decision as follows. Id. at 2-5.

Respondent testified that he is thirty-three (33) years old, was married in 2009 and has three children. Ibid. He graduated from Penn State University in 2005. Ibid. After graduating, he needed money to repay his father. He began helping a friend process hurricane claims, which was his first experience in public adjusting. Ibid. After about one year, he moved to Florida to start his own business as a public adjuster. Ibid. He became licensed in Florida, but was not aware that he needed to designate a primary adjuster and was fined \$1,500. Id. at 3. He was the only employee of his business. Ibid.

In 2011, Scaccetti returned to Pennsylvania, obtained a reciprocity license in Pennsylvania, and applied for an individual New Jersey public adjuster license. Ibid. In 2012, he applied for a corporate New Jersey public adjuster license. Ibid. He acknowledged that the New Jersey license required him to disclose the Florida fine, which he did not disclose because he had forgotten about it. Ibid. In 2013 or 2014, Scaccetti lost his Florida home to foreclosure because he could not keep up with the \$2,600 per month payment. Ibid. After moving to Pennsylvania, he rented a townhouse for \$1,700 per month. Ibid. After expenses, Scaccetti earned about \$50,000 in 2014 and expects to make the same in 2015. Ibid. He was not sure how many commissions he earned in 2014. Id. at 4.

Scaccetti rents a small office for which he pays \$450 a month in rent. Id. at 3. Before Superstorm Sandy, Respondent Scaccetti had handled six or seven claims in Pennsylvania and New Jersey. Ibid. Scaccetti stated that another public adjuster filed the complaint with the Department that led to this administrative action against him. Id. at 4. He believes the complaint was filed because Respondents' letter made them look like they were not doing their job. Ibid.

As to the December 2012 Letters, Scaccetti explained that he intended to help people by sending the letters. Id. at 3. He was led to believe by attorneys and continuing education that a missed deadline could be fatal to claims resulting from a storm. Ibid. He drafted the letter in haste, and upon reflection would probably not have written the letter. Id. at 3-4. Scaccetti acknowledged that he made a mistake by not including his name on the letter. Id. at 4. These letters generated three claims. Ibid.

As to the August 2013 Letters, Scaccetti explained that absent guidance, he guessed as to what was wrong with his prior letters. Ibid. With the August 2013 Letters, he targeted larger commercial properties specific to the area near the Raritan Bay, but it also went to people who owned multiple dwelling units. Ibid. These letters generated six claims. Ibid.

As to his cooperation with the Department investigation, he provided his prior attorney with the list of people to whom he sent the December 2012 Letters and his prior attorney advised that he had provided the list to the State. Ibid. Scaccetti did receive communication from the State that the list had not been received, so he followed-up with his prior attorney. Ibid. He did not follow-up again. Ibid.

ALJ'S LEGAL ANALYSIS AND CONCLUSIONS AS TO PENALTY

On January 7, 2016, the ALJ issued the Initial Decision, recommending the revocation of Respondents' public adjuster licenses and the imposition of a civil penalty in the amount of \$100,000.

As to the issue of license revocation, the ALJ noted that N.J.S.A. 17:22B-14a(2) provides that the Commissioner may revoke a public adjuster's license if he "[h]as withheld material information or made a material misstatement in the application for the license." Initial Decision at 5. The ALJ stated that the record clearly reflects that Scaccetti failed to disclose the fine imposed upon him with regard to his license in Florida. Ibid. The ALJ recognized Scaccetti's argument that the failure to disclose was not done with the purpose to deceive or to defraud, but agreed with the Department's assertion that fraudulent intent is not required by N.J.S.A. 17:22B-14a(2). Ibid. The ALJ noted that, at hearing, Scaccetti appeared to argue alternatively that he had forgotten about the imposition of the \$1,500 fine in Florida; that he did not make so much money that he would not remember a \$1,500 fine; and that disclosure of the \$1,500 fine was not required and did not apply to the application in question. Ibid. The ALJ further noted that the time to address whether or not disclosure of the fine applied to the application in question passed with the issuance of the PSD and is not given consideration at this time. Ibid. Additionally, the ALJ stated that Scaccetti's attempts to cast this as a de minimus violation do a disservice to the seriousness with which the Department considers its obligations in protecting the public interest in issuing such licenses. Initial Decision at 5-6. Therefore, the ALJ concluded that the Department has demonstrated that revocation of Respondents' public adjuster licenses is appropriate in this instance. Initial Decision at 6.

With regard to the appropriate amount of monetary penalties to impose upon Respondents, the ALJ noted that the Department sought to impose a penalty of \$2,500 individually against Respondent Scaccetti, \$2,500 individually against Respondent All Claims, and \$205,000 jointly and severally against both Respondents. Ibid. The ALJ noted that the standards for determining the appropriateness of civil monetary penalties should be discussed by applying the factors as set forth in Kimmelman v. Henkels & McCoy, 108 N.J. 123, 137-39 (1987). Ibid. The factors are: 1) the good faith or bad faith of the Respondent, 2) the Respondent's ability to pay, 3) the amount of profits Respondent gained as a result of the illegal activity, 4) the injury to the public, 5) the duration of the conspiracy or scheme, 6) whether criminal or treble damages actions have been filed and whether '[a] large civil penalty may be unduly punitive if other sanctions have been imposed for the same violation of the [same act],' and 7) whether past violations have occurred. Ibid.

With respect to the Kimmelman factors, the ALJ made the following findings. As to the first factor, the ALJ found that the Department has demonstrated that Respondent has not acted in good faith. Ibid. The ALJ noted that the record reflects that Respondent sent out letters intended to target New Jersey residents and property owners residing in and owning property in the areas that were hardest hit and experienced the most destruction from the most significant natural disaster to affect this area in recent memory if not beyond. Ibid. In addition, when contacted by the Department to inquire as to these letters, the ALJ noted that Respondents did not reply and instead "doubled down" sending another round of letters to people residing in these areas. Ibid. Coupled with the failure to disclose material information on Respondents' public adjuster license applications, the ALJ determined that that the first factor weighs against Respondents. Initial Decision at 6-7.

As to the second factor, the ALJ found that Scaccetti testified credibly that he is a one-man operation, largely responsible not just for the operation of the business but for the food and shelter of his family unit, which includes his wife and three children. Id. at 8. The ALJ also found that Scaccetti described credibly the level of income he earned, which can be translated to household expenses, and which will, of course, be impacted based on the size of the penalty. Ibid. The ALJ concluded that, while it is true that this is just one factor to be considered, it is to be given consideration and weighs in favor of Respondents. Ibid.

As to the amount of profits gained as a result of the illegal activity, factor three, the ALJ found that Respondents' acts in violation of the State's public adjuster laws generated fees in the amount of \$17,846.76⁴. Id. at 7.

As to the fourth factor, the ALJ noted that the injury to the public is not limited to those who received the inappropriate correspondence, or those who responded to them, but also includes the undermining of the public's confidence in the insurance industry. Ibid. The ALJ therefore found that this factor weighs against Respondents. Ibid.

As to the fifth factor, the ALJ rejected the argument that the sending of letters constituted a mere two instances distinct and discrete eight months apart, and noted that the record clearly reflects that there were attempts by the Department to address the 2012 Letters before the August 2013 Letters were issued. Ibid. Additionally, the ALJ noted that the conduct described goes back to the moment when Scaccetti failed to disclose the existence of the Florida fine in obtaining his New Jersey license, and continues through the failures to cooperate with the

⁴ This amount appears to be a typographical error as the correct total fees earned is \$19,626.77, which is the amount stated by the ALJ in the PSD at page 5. The Department's Brief in Support of Motion for Summary Decision also states different amounts of fees generated. See Motion for Summary Decision Brief at page 7 (\$19,626.77); Brief at page 22 and 23 (\$17,846.76). A review of the Respondents answers to interrogatories indicates that the correct amount of fees generated is \$19,626.77. See Motion for Summary Decision Brief, Exhibit 7, Question Nos. 3 and 5.

investigation – the charges that have been sustained in the Partial Summary Decision Order. Ibid. The ALJ concluded that this creates a timeline that spans a number of years that clearly weighs against Respondents in considering the appropriate penalty. Ibid.

As to the sixth factor, the ALJ found that the lack of any criminal punishments for the underlying causes weighs in favor of a more significant civil penalty and concluded that this factor weighs against Respondent. Ibid.

As to the final factor, the ALJ concluded that this factor does not weigh against Respondent since the record is devoid of any prior violations of the Public Adjusters' Act. Ibid.

Based upon the foregoing analysis, the ALJ concluded that a fine of \$100,000, which is approximately two years' worth of what Scaccetti indicates he earns in a given year at a job he may no longer perform, is substantially significant to act as an appropriate deterrent and is an appropriate penalty. Ibid.

EXCEPTIONS

On January 20, 2016, the Office of the Attorney General, on behalf of the Department, submitted Exceptions to the Initial Decision. Respondents did not submit any Exceptions.

In its Exceptions, the Department concurs with the Initial Decision of the ALJ, recommending revocation of Respondents' public adjuster licenses and the imposition of monetary civil penalties of \$100,000. Nevertheless, the Department sought to clarify several issues as follows.

The Department notes that the Initial Decision notes that the "Department seeks revocation of respondents' public adjusters licenses" (Initial Decision at 5); however, the ALJ only appears to base his recommendation for revocation on the Respondents' failures to disclose

an administrative fine from Florida on two licensing applications. The Department excepts to the failure of the ALJ to also include Respondents' mailing of thousands of misleading letters to Superstorm Sandy victims and Respondents' failure to cooperate with an investigation by the Department as additional bases for revocation. Accordingly, the Department requests that the Initial Decision be modified to reflect that the revocation of Respondents' public adjuster licenses was also necessary and appropriate in light of Respondents' failure to cooperate with an investigation by the Department and their deliberate attempt to mislead the public by concealing that they were public adjusters by making a series of false or misleading statements to Superstorm Sandy victims.

Additionally, the Department excepts to the ALJ's Kimmelman analysis to the extent that it found that "the record is devoid of any prior violations of the Public Adjuster's Licensing Act and therefore no consideration of such shall be given. This factor does not weigh against the respondent." The Department asserts that while it is true that there are no prior violations of New Jersey's public adjuster laws, Scaccetti had previously violated Florida's insurance laws, and therefore, this factor should be considered and should weigh against Scaccetti with regard to the appropriate monetary penalty.

LEGAL DISCUSSION

As concluded by the ALJ, the Department bears the burden of proving the allegations in the OTSC by a preponderance of the competent, relevant, and credible evidence. See Parsekian, supra, and In re Polk, supra.

OTSC – Allegations Against Respondents

For all the reasons set forth in the Initial Decision, I concur that summary decision is appropriate as to Counts One through Five of the OTSC issued against the Respondents. As found by the ALJ, Respondents did not dispute any of the facts alleged by the Department in the OTSC, and therefore there is no genuine issue as to any material fact underlying the charges. Moreover, the Respondents provided no legally competent defenses to the violations of the public adjuster laws charged in the OTSC and as a result, the Department was clearly entitled to prevail as a matter of law on all violations of the OTSC.

Count One – December 2012 Advertisements/Solicitations

Count One of the OTSC alleges that in the aftermath of Superstorm Sandy Respondents circulated an advertisement and solicitation to the general public that contained untrue, deceptive, or misleading information, in violation of: N.J.S.A. 17:22B-14a(1) (violated any insurance law or violated any law in the course of dealing as a public adjuster) and 17:22B-14a(4) (demonstrated incompetency, lack of integrity, bad faith, dishonesty, financial irresponsibility or untrustworthiness); N.J.S.A. 17:29B-3 (engaged in a trade practice that is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance); and N.J.A.C. 11:1-37.14(a)1 (violated any insurance law), 11:1-37.14(a)2 (violated any law while acting as a public adjuster), 11:1-37.14(a)3 (committed a fraudulent or dishonest act), 11:1-37.14(a)4 (demonstrated lack of integrity, incompetency, bad faith, dishonesty, financial irresponsibility, or untrustworthiness), and 11:1-37.14(a)17 (committed any act which the Commissioner determines to be inappropriate conduct).

It is undisputed and admitted that Respondents mailed the December 2012 Letters to “randomly selected property owners in areas affected” by Superstorm Sandy. PSD at 2. The

December 2012 Letters did not state that Respondents were public adjusters, but were in fact a solicitation for public adjusting services intended to generate public adjusting business. Id. at 3. The December 2012 Letters stated they were from a “Claims Department,” and that Respondents possessed records indicating that the recipients of the letters had an uninspected flood claim resulting from Superstorm Sandy, despite Respondents not possessing any information indicating such. Ibid. The December 2012 Letters also stated that the recipients’ Superstorm Sandy Claim may be denied if a proper proof of loss was not submitted by December 28, 2012. Ibid. The December 2012 Letters created confusion among recipients. Ibid. In total, Respondents received \$11,686.15 in fees from business generated via the December 2012 Letters. See Motion for Summary Decision Brief, Exhibit 7, Question No. 5.

In light of the foregoing, I concur with the ALJ's findings that the Department proved the allegations in Count One and FIND that such conduct violates N.J.S.A. 17:22B-14a(1) and (4), N.J.S.A. 17:29B-3, and N.J.A.C. 11:1-37.14(a)1, 2, 3, 4, and 17. However, I hereby MODIFY the Initial Decision to explicitly FIND that each of the 1,886 December 2012 Letters mailed to New Jersey residents (see PSD at 2) constitute separate and distinct violations of the laws cited above.

Count Two – Failure to Cooperate with a Department Investigation

Count Two of the OTSC alleges that in March 2013, Respondents failed to cooperate with an investigation by the Commissioner by failing to timely respond to the Department’s inquiries, in violation of N.J.S.A. 17:22B-14a(1) (violated any insurance law or violated any law in the course of dealing as a public adjuster) and 17:22B-14a(4) (demonstrated incompetency, lack of integrity, bad faith, dishonesty, financial irresponsibility or untrustworthiness), and N.J.A.C. 11:1-37.14(a)1 (violated any insurance law), 11:1-37.14(a)2 (violated any law while

acting as a public adjuster), and 11:1-37.14(a)11 (failed to cooperate with an investigation by the Commissioner).

The record is clear that the Department contacted Respondents in February 2013 and requested information related to their December 2012 Letters. PSD at 3. On March 22, 2013, the Department contacted Respondents and again requested information related to the December 2012 Letters, but the Department has no record of receiving the requested information from Respondents. Id. at 3-4.

By letter dated November 11, 2015, Respondents requested that the ALJ reconsider his grant of summary judgment on the issue of Scaccetti's failure to cooperate with the Department's investigation based on newly discovered evidence. See November 11, 2015 Letter. In that letter, Respondents assert that at the October 5, 2015 hearing, Respondents introduced a letter dated February 20, 2013, from Scaccetti's then attorney, Richard Kwasny, Esq. ("Kwasny"), to the Department's investigator in this matter, Rosalyn Benitez ("Benitez"), enclosing the information sought by the Department. Ibid. Respondent Scaccetti believed that was all the information requested by the Department, and believed that he fully cooperated with the request. Ibid. At the hearing, attorney for the Department requested that Respondents locate any emails or other communication between Scaccetti and Kwasny concerning the issue. Ibid. Respondents assert that they located newly discovered evidence consisting of three (3) e-mails between Scaccetti and Kwasny, from February 11 through February 14, 2013. Ibid. The e-mails indicate that Kwasny was purporting to represent Scaccetti and to help assist him in responding to the Department's request for information. The November 11, 2015 letter asserts that "[b]ased on the Feb 20 letter Kwasny must have spoken to Ms. Benitez between the 14 and 20 to confirm what was needed and where to send it." Ibid. The letter further states that the February 20, 2013 letter

“[e]ither...was lost by the post office or misdelivered somewhere in the state bureaucracy” and that “it’s not the fault of either side and certainly not the basis for a sanction for noncooperation with an investigation.” Ibid.

On November 12, 2015, the Department filed a response to Respondents’ request for reconsideration, arguing that Respondents’ assertions are contradicted by the record. See November 12, 2015 Letter. First, the Department stated that Kwasny’s representation of and assistance to Scaccetti regarding his response to the Department’s request for information was never in dispute, and noted that the OTSC specifically references a conversation between Benitez and Kwasny regarding the investigation. Ibid. Next, the Department noted that Respondents’ assertion that the February 20, 2013 letter never made it to the Department is not in dispute and ignores the fact that on March 22, 2013, Benitez called and sent a fax to Respondents informing them that she had not received the requested information. See Motion for Summary Decision, Exhibit 2, p. 2, ¶ 2. Therefore, the Department asserted that Respondents knew that Benitez did not receive the February 20, 2013 letter, yet took no additional action.

The Initial Decision is silent as to Respondents’ request, which was submitted after the hearing, but prior to the close of the record. I find that Respondents’ recently provided emails do not alter the findings, and summary decision as found by the ALJ continues to be appropriate.

As argued by the Department, the evidence clearly demonstrates that on March 22, 2013, the Department investigator called and sent a fax to Respondents informing them that she had not received the requested information. See Department’s Motion for Summary Decision, Exhibit 2, p. 2, ¶ 2. Respondents do not dispute this finding. Thus, Respondents knew that Benitez did not receive the February 20, 2013 letter, yet took no additional action. Accordingly, Respondents’ argument that the three e-mails between Scaccetti and Kwasny constitute a basis

for reconsidering the ALJ's grant of summary decision as to Count Two of the OTSC in this matter is unpersuasive and flawed.

In light of the foregoing analysis, Respondents' request to reconsider the grant of summary decision as to Count Two of the OTSC is DENIED. Furthermore, I concur with the ALJ's findings that the Department proved the allegations in Count Two and FIND that Respondents failed to cooperate with an investigation by the Commissioner by failing to timely respond to the Department's inquiries, in violation of N.J.S.A. 17:22B-14a(1) and (4), and N.J.A.C. 11:1-37.14(a)1, 2, and 11.

Count Three – August 2013 Advertisements/Solicitations

Count Three of the OTSC alleges that while engaging in the business of a public adjuster, Respondents circulated an advertisement and solicitation in the form of a letter to the general public which indicated that Respondents had confidential information regarding the recipients' "Hurricane Sandy Claim" despite Respondents having no knowledge of any particular claim filed by the recipients, and despite notice from the Department that their prior similar advertisements and solicitations contained untrue, deceptive, or misleading information, in violation of N.J.S.A. 17:22B-14a(1) (violated any insurance law or violated any law in the course of dealing as a public adjuster) and 17:22B-14a(4) (demonstrated incompetency, lack of integrity, bad faith, dishonesty, financial irresponsibility or untrustworthiness); N.J.S.A. 17:29B-3 (engaged in a trade practice that is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance); and N.J.A.C. 11:1-37.14(a)1 (violated any insurance law), 11:1-37.14(a)2 (violated any law while acting as a public adjuster), 11:1-37.14(a)3 (committed a fraudulent or dishonest act), 11:1-37.14(a)4 (demonstrated lack of integrity, incompetency, bad faith, dishonesty, financial irresponsibility, or untrustworthiness), and 11:1-

37.14(a)17 (committed any act which the Commissioner determines to be inappropriate conduct).

It is undisputed and admitted that Respondents sent the August 2013 Letters intending to generate public adjusting business. PSD at 4. The August 2013 Letters stated that the recipients' Hurricane Sandy Claim may have been underpaid;" that an "oversight" can result in commercial roofs damaged by Superstorm Sandy being denied full roof replacement; and that said "oversight" can be corrected by contacting Respondents. Ibid. However, Respondents did not possess any information indicating such for any of the letters' recipients. Ibid. In total, Respondents received \$7,940.62 in fees from business generated via the August 2013 Letters. See Motion for Summary Decision Brief, Exhibit 7, Question No. 5.

In light of the foregoing, I concur with the ALJ's findings that the Department proved the allegations in Count Three and FIND that Respondents' conduct as set forth in Count Three of the OTSC violates N.J.S.A. 17:22B-14a(1) and (4), N.J.S.A. 17:29B-3, and N.J.A.C. 11:1-37.14(a)1, 2, 3, 4, and 17. However, I hereby MODIFY the Initial Decision to explicitly FIND that each of the approximately 500 August 2013 Letters mailed to New Jersey residents (see PSD at 4) constitute separate and distinct violations of the laws cited above.

Count Four – Scaccetti's Public Adjuster Application

Count Four of the OTSC alleges that on or about December 7, 2011, Scaccetti committed a fraudulent or dishonest act in his application for licensure as an individual public adjuster license by stating that he had not been named or involved as a party in an administrative proceeding regarding any professional or occupational license and thus failing to disclose the November 2007 Florida Administrative Proceeding against his Florida public adjuster license, in violation of N.J.S.A. 17:22B-14a(1) (violated any insurance law or violated any law in the course

of dealing as a public adjuster); 17:22B-14a(2) (withheld material information or made material misstatement in application for a public adjuster license), 17:22B-14a(3) (committed a fraudulent or dishonest act), and 17:22B-14a(4) (demonstrated incompetency, lack of integrity, bad faith, dishonesty, financial irresponsibility or untrustworthiness); and N.J.A.C. 11:1-37.14(a)3 (committed a fraudulent or dishonest act), 11:1-37.14(a)6 (withheld material information or made material misstatement on application for a public adjuster license) and 11:1-37.14(a)17 (committed any act which the Commissioner determines to be inappropriate conduct).

It is undisputed and admitted that in November 2007, Scaccetti was the subject of a Florida Department of Financial Services administrative proceeding, Case No. 92976-07-AG. PSD at 5. On November 5, 2007, Scaccetti signed a consent order settling the Florida administrative proceeding wherein he agreed to pay a \$1,500 administrative penalty. Ibid. On December 7, 2011, when applying for his New Jersey public adjuster license, Scaccetti failed to disclose the existence of the November 2007 Florida Administrative Proceeding against his Florida public adjuster license in said application by falsely answering “No” in response to whether he had “ever been involved in an administrative proceeding regarding any professional or occupational license or registration.” Ibid.

In light of the foregoing, I concur with the ALJ's findings that the Department proved the allegations in Count Four and FIND that Respondent Scaccetti committed a fraudulent or dishonest act in his application to the Commissioner for his individual public adjuster license, in violation of N.J.S.A. 17:22B-14a(1), (2), (3), and (4) and N.J.A.C. 11:1-37.14(a)3, 6, and 17.

Count Five – All Claims’ Public Adjuster Application

Count Five of the OTSC alleges that on or about November 16, 2012, Respondents committed a fraudulent or dishonest act in their application to license All Claims as business

entity public adjuster because the application failed to disclose that Scaccetti as All Claims' sole DRLP and sole partner had been named as a party in an administrative proceeding regarding any professional or occupational license in the November 2007 Florida Administrative Proceeding against Scaccetti's Florida public adjuster license, in violation of N.J.S.A. 17:22B-14a(1) (violated any insurance law or violated any law in the course of dealing as a public adjuster), 17:22B-14a(2) (withheld material information or made material misstatement in application for a public adjuster license), 17:22B-14a(3) (committed a fraudulent or dishonest act), and 17:22B-14a(4) (demonstrated incompetency, lack of integrity, bad faith, dishonesty, financial irresponsibility or untrustworthiness); and N.J.A.C. 11:1-37.14(a)3 (committed a fraudulent or dishonest act), 11:1-37.14(a)6 (withheld material information or made material misstatement on application for public adjuster license), and 11:1-37.14(a)17 (committed any act which the Commissioner determines to be inappropriate conduct).

It is undisputed and admitted that at all relevant times, Scaccetti was the sole partner and sole sub-licensee of All Claims, and on November 16, 2012, Respondents applied for All Claims' New Jersey business entity public adjuster license. PSD at 5. Respondents withheld the existence of the November 2007 Florida Administrative Proceeding in said application by falsely answering "No" in response to whether "any owner, partner, officer or director, or manager of [the] limited liability company, [has] ever been named or involved as a party in an administrative proceeding." Id. at 5-6.

In light of the foregoing, I concur with the ALJ's findings that the Department proved the allegations in Count Five and FIND that Respondents committed a fraudulent or dishonest act in the application to the Commissioner for All Claims' business entity public adjuster license, in violation of N.J.S.A. 17:22B-14a(1), (2), (3), and (4) and N.J.A.C. 11:1-37.14(a)3, 6, and 17.

Penalty Against Respondents

Revocation of Respondents' Public Adjuster Licenses

With respect to the appropriate action to take against Respondents' public adjuster licenses, I find that the record is more than sufficient to support license revocation and, in fact, compels the revocation of Respondents' public adjuster licenses. As such, I concur with the ALJ's recommendation that Respondents' licenses be revoked.

The Public Adjusters' Act empowers the Commissioner to enforce its provisions and sanction those who violate them, including revocation of a public adjuster's license. N.J.S.A. 17:22B-14a. The Commissioner has the responsibility and the authority under the Public Adjusters' Act to sanction public adjusters who attempt to exploit the public for their own personal gain. Furthermore, the Commissioner is charged with the duty to protect the public welfare and to instill public confidence in both public adjusters and the insurance industry as a whole. See Comm'r v. Budge, OAL Dkt. No. BKI 10260-04, 2007 N.J. Agen. Lexis 515, Final Decision and Order (6/28/07) at 32; see also In re Jones, OAL Dkt. No. BKI 02368-10, Final Decision and Order (12/16/10). A public adjuster "acts under a duty of care and in a fiduciary capacity with respect to his client insureds." Budge, supra, Final Decision at 27. "The very essence of a public adjuster's responsibilities is to aid an insured in negotiating and effectuating the settlement of loss damage claims." Ibid. Further, "[i]t is the public adjuster's responsibility to honestly perform his job." Ibid. A "public adjuster is bound to the highest degree of fidelity and good faith with respect to his fulfillment of his fiduciary obligations. Public policy requires strict adherence to the laws and regulations which govern a public adjuster's conduct." Ibid.

Moreover,

[a] producer licensee's honesty, trustworthiness and integrity are of paramount concern, since an insurance producer collects money from insureds. The nature and duty of an insurance producer...calls for precision, accuracy and forthrightness...it is well established that a producer acts in a fiduciary capacity in the conduct of his insurance business. The producer's fiduciary duties run both to the insured and the insurer. Hence a producer is held to a high standard of conduct, and should fully understand and appreciate the effect of fraudulent or irresponsible dealings on the industry and on the public. **The reasoning and public policy considerations which support these precepts apply with equal weight with respect to public adjuster licensees.**

Id. at 31-32 (citing Strawbridge v. New York Life Ins. Co., 504 F. Supp. 824 (1980) (emphasis added).

Our strong public policy is to instill public confidence in both insurance professionals and the industry as a whole. In re Parkwood Co., supra. Courts have recognized that the insurance industry is strongly affected with the public interest and the Commissioner is charged with the duty to protect the public welfare. Sheeran v. Nationwide Mutual Insurance Company Inc., 80 N.J. 548, 559 (1979). Only the existence of extraordinary mitigating factors can form a basis for withholding the sanction of license revocation where a licensee engages in fraudulent conduct, and particularly insurance fraud. Commissioner v. Weiran Dobrek and Thomas Dobrek, OAL Dkt. Nos. BKI 10817-12 and BKI 2360-13, Initial Decision (06/02/14), Final Decision and Order (01/15/15).

Here, the record clearly reflects that in Scaccetti's applications for his New Jersey individual public adjuster license and for All Claims' business entity public adjuster license, Scaccetti failed to disclose the Florida Administrative Proceeding. Scaccetti argues that the failure to disclose was not done with the purpose to deceive or to defraud, however, I agree with

the ALJ that fraudulent intent is not required by N.J.S.A. 17:22B-14a. I also agree with the ALJ's determination that Scaccetti's attempt to cast his failure to disclose as a de minimus violation is a disservice to the seriousness with which the Department protects the public interest in its exercise of vetting applicants and issuing professional licenses subject to its jurisdiction and regulation.

I also agree with the Department's request set forth in its Exceptions to MODIFY the Initial Decision to explicitly provide that the revocation of Respondents' public adjuster licenses was also fully warranted and necessary due to Respondents' failure to cooperate with an investigation by the Department and their deliberate attempt to mislead over 2,300 New Jersey consumers in the December 2012 and August 2013 letters. These Letters concealed that Respondents were public adjusters and made a series of false or misleading statements to Superstorm Sandy victims, and therefore these significant and repetitive violations of the public adjuster laws are additional substantial and material violations demonstrating that revocation is the appropriate sanction.

Accordingly, I hereby ADOPT the recommended revocation of Respondents' public adjuster licenses and MODIFY the reasons for such revocation as set forth above.

Monetary Penalty Against Respondents

Any person violating the Public Adjusters' Act shall be subject to a penalty not to exceed \$2,500 for the first offense and not to exceed \$5,000 for the second and each subsequent offense. N.J.S.A. 17:22B-17 and N.J.A.C. 11:1-37.14(b). The ALJ recommended a penalty of \$100,000 against Respondents.

As discussed in the Initial Decision, pursuant to Kimmelman v. Henkels & McCoy, Inc., supra, certain factors are to be examined when assessing administrative monetary penalties such

as those that may be imposed pursuant to N.J.S.A. 17:22B-17 upon public adjusters. The record herein indicates the following with respect to these factors. I agree with the ALJ's finding that Respondents acted in bad faith. In December 2012, Respondents sent out letters seeking to exploit New Jersey residents in areas devastated by Superstorm Sandy. When the Department contacted Respondents in relation to complaints about these letters, Respondents not only failed to respond but also proceeded to send out another set of letters targeting Superstorm Sandy victims in August 2013. In total, these Letters constitute over 2,300 separate and distinct violations of the Public Adjusters Act and demonstrate bad faith. Furthermore, Respondents withheld material information on their separate license applications. I agree with the ALJ that this factor weighs heavily against Respondents.

Next, regarding the ability of the Respondents to pay the civil penalty, the ALJ found that Scaccetti testified credibly that he is self-employed, is largely responsible not just for the operation of the business, but for the food and shelter of his family unit, and that after expenses, he made about \$50,000 in 2014 and expects to make about the same in 2015. However, a public adjuster's ability to pay is only a single factor to be considered in determining an appropriate fine and does not obviate the need for the imposition of an otherwise appropriate monetary penalty. Moreover, the Commissioner has issued substantial fines against licensees despite their arguments regarding their inability to pay. See Commissioner v. Fonseca, OAL Dkt. No. BKI 11979-10, Initial Decision (08/15/11), Final Decision and Order (12/28/11) (issuing a \$100,500 civil penalty despite the producer arguing that he was unable to pay); See also Commissioner v. Malek, OAL Dkt. Nos. BKI 4520-05 and BKI 486-05, Initial Decision (12/06/05), Final Decision and Order (01/18/06) (fine increased from \$2,500 to \$20,000 even though the producer argued an inability to pay fines in addition to restitution); Commissioner v. Erwin, OAL Dkt. No.

BKI 4573-06, Initial Decision, (07/09/07), Final Decision and Order (09/17/07) (fine of \$100,000 imposed despite evidence of the Respondent's inability to pay).

The record also indicates that Respondents generated fees in the amount of \$19,626.77 from sending the 2,386 letters to New Jersey residents. By attempting to exploit over 2,300 consumers through deceptive and misleading advertisements, Respondents eroded the public's trust in the insurance industry. In addition, the conduct described was not an isolated incident. Rather, there were two sets of letters sent eight months apart to Superstorm Sandy victims, two license applications containing inaccurate information, and a failure to cooperate with the Department's investigation. I agree with the ALJ's determination that these factors weigh against Respondents. On the issue of whether related penalties might be duplicative, I agree with the ALJ's finding that the lack of any criminal punishment for Respondents' conduct weighs in favor of a more significant civil penalty being imposed.

Lastly, the record indicates no prior violations of the Public Adjusters' Act or Trade Practices Act. However, in its Exceptions, the Department argues that while it is true that there are no prior violations of New Jersey's public adjuster laws, Scaccetti had previously violated Florida's insurance laws. Therefore, the Department asserts that this factor should be considered, and should weigh against Scaccetti. I reject this argument given the facts of this matter. In the November 2007 Florida Administrative Action, the State of Florida, Department of Financial Services alleged that Scaccetti negotiated and adjusted claims without the proper appointment; failed to issue contracts according to an Emergency Rule issued by that Department; and failed to designate a primary adjuster for the adjusting firm location. See Motion for Summary Decision, Exhibit 8. The Florida Administrative Action relates to violations of Florida law, not New Jersey law.

While this issue has not been directly addressed, Kimmelman and other Final Decisions and Orders issued by prior Commissioners indicate that the prior violations contemplated by this factor include prior violations of the regulatory scheme that is the basis for the enforcement action. For example, in Kimmelman, at issue was the Respondent's alleged violations of the New Jersey Antitrust Act, N.J.S.A. 56:9-1 et seq. ("Antitrust Act"). When discussing the prior violations factor, the court stated it "should take into consideration whether the defendant has violated the Antitrust Act on prior occasions." Kimmelman, supra, 108 N.J. at 139. In addition, the court noted that if past penalties have been insufficient to deter him or her from illegal activity, this factor weighs strongly in favor of greater penalties. Ibid.; see also Commissioner v. Charles, OAL Dkt. No. BKI 06530-14, Initial Decision (03/02/15), Final Decision and Order at 16 (08/28/15) (focusing on the New Jersey Insurance Producer Licensing Act of 2001 ("Producer Act") when analyzing the prior violations factor); Commissioner v. Brown and Guaranteed Bail Bonds, OAL Dkt. No. BKI 10377-13, Initial Decision (09/15/15), Final Decision and Order at 25 (12/14/15) (focusing on the Producer Act when analyzing the prior violations factor); Commissioner v. Stone, OAL Dkt. No. BKI 6301-07, Initial Decision (06/16/08), Final Decision and Order at 15-16 (09/15/08) (focusing on the Producer Act when analyzing the prior violations factor).

Moreover, the Department did not assert this argument in their Brief in Support of its Motion for Summary Decision ("Brief") when discussing the prior violations factor in its Kimmelman analysis. Rather, the Department focused on the New Jersey Public Adjusters' Licensing Act and the New Jersey Trade Practice Act which are the basis for current enforcement action. See Motion for Summary Decision Brief at page 24. The Department noted

that “[t]here is no evidence that Respondents have been penalized for prior violations of the Public Adjusters’ Licensing Act.” See Id. at 24.

In light of the above Kimmelman analysis and the multiple serious violations committed by Respondents in this matter, I ADOPT the ALJ’s recommendation that the imposition of a \$100,000 fine is appropriate. I agree with the ALJ that the presence of numerous aggravating factors support the imposition of this penalty. The record in this matter clearly demonstrates that the fine is fully warranted, not excessive or unduly punitive, and succeeds to the required level of opprobrium for Respondents’ conduct. However, I MODIFY the Initial Decision to have it reflect that the penalty be imposed as follows: \$45,000 jointly and severally against both Respondents for Count One of the OTSC, \$5,000 jointly and severally against both Respondents for Count Two of the OTSC, \$45,000 jointly and severally against both Respondents for Count Three of the OTSC, \$2,500 individually against Scaccetti for Count Four of the OTSC, and \$2,500 jointly and severally against both Respondents for Count Five of the OTSC. Imposition of joint and several fines against both Respondents for Counts 1, 2, 3, and 5 is appropriate given that the violations were committed in concert by both.

Finally, I ADOPT the ALJ’s finding that the Respondents be ordered to pay \$425 as reimbursement for costs of investigation and prosecution.

CONCLUSION

Having carefully reviewed the Order of Partial Summary Decision, the Initial Decision, the Exceptions, and the entire record associated with this matter, I hereby ADOPT the factual findings and conclusions of law reached by the ALJ in the Order of Partial Summary Decision, which findings were sustained by the ALJ in the Initial Decision with respect to Counts One through Five of the OTSC. I hereby supplement the Order of Partial Summary Decision and

Initial Decision to clarify the specific insurance law provisions violated by Respondents with respect to Counts One through Five of the OTSC. I ADOPT the ALJ's recommendations that Respondents be ORDERED to pay a penalty of \$100,000 and to reimburse the Department \$425 for its costs in investigating and prosecuting this matter, but MODIFY the Initial Decision to have it reflect that the \$100,000 penalty be imposed as follows: \$45,000 jointly and severally against both Respondents for Count One of the OTSC, \$5,000 jointly and severally against both Respondents for Count Two of the OTSC, \$45,000 jointly and severally against both Respondents for Count Three of the OTSC, \$2,500 individually against Scaccetti for Count Four of the OTSC, and \$2,500 joint and several against both Respondents for Count Five of the OTSC. I also ADOPT the ALJ's recommendation that Respondents' public adjuster licenses be revoked, but MODIFY the Initial Decision to have it reflect that revocation of said licenses is not solely based upon Respondents' failure to disclose the administrative fines in two licensing applications, but is also based on Respondents' failure to cooperate with an investigation by the Department and their conduct surrounding the dissemination of deceptive letters to consumers.

IT IS SO ORDERED on this 7th day of April, 2016.



Richard J. Padolato
Acting Commissioner