

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

OAL DOCKET NO.: BK1-01406-13  
AGENCY DOCKET NO.: OTSC #E12-145

RICHARD J. BADOLATO, )  
COMMISSIONER, NEW JERSEY )  
DEPARTMENT OF BANKING AND )  
INSURANCE, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
JOSEPH BIGICA AND JOSEPH )  
BIGICA, LLC )  
 )  
Respondents. )

FINAL DECISION AND ORDER

This matter comes before the Commissioner of Banking and Insurance (“Commissioner”)<sup>1</sup> pursuant to the authority of N.J.S.A. 52:14B-1 et seq., N.J.S.A. 17:1-15, the New Jersey Producer Licensing Act of 2001 (“Producer Act”), N.J.S.A. 17:22A-26 et seq., and all powers expressed or implied therein, for the purposes of reviewing the May 27, 2015 Order for Partial Summary Decision (“May 27, 2015 Partial Summary Decision” or “05/27/2015 PSD”), which granted in part and denied in part a Motion for Summary Decision brought by the Department of Banking and Insurance (“Department”), the November 23, 2015 Order for Partial Summary Decision (“November 23, 2015 Partial Summary Decision” or “11/23/2015 PSD”), which granted a second Motion for Summary Decision brought by the Department, and the May 9, 2016 Initial Decision (“May 9, 2016 Initial Decision” or “05/09/2016 Initial Decision”),

---

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

(collectively referred to as the "Initial Decision") of Chief Administrative Law Judge Laura Sanders ("ALJ").

In the May 27, 2015 Partial Summary Decision, the ALJ granted summary decision to the Department against Respondents Joseph Bigica ("Bigica") and Joseph Bigica, LLC ("Bigica LLC") (collectively "Respondents") on Count One and against Respondent Bigica on Count Two of the Department's Order to Show Cause No. E12-145 ("OTSC"), and recommended revocation of Respondent Bigica's insurance producer license and the imposition of civil monetary penalties against Respondents Bigica and Bigica LLC, jointly and severally, in the amount of \$5,000 each<sup>2</sup>, and Respondent Bigica, individually, in the amount of \$10,000, as well as costs of investigation against Respondents Bigica and Bigica LLC, jointly and severally.

In the November 23, 2015 Partial Summary Decision, the ALJ granted summary decision to the Department against Respondent Bigica LLC as it related to the revocation of Bigica LLC's insurance producer license.

In the May 9, 2016 Initial Decision, the ALJ ordered that, pursuant to a May 9, 2016 request from the Department, wherein it dismissed Count Two of the OTSC as it only related to Respondent Bigica LLC's liability for Respondent Bigica's New Jersey income tax, all issues have been resolved either by summary decision or by dismissal.

#### STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On December 12, 2012,<sup>3</sup> the Department issued the OTSC against Respondents Bigica and Bigica LLC, which sought to revoke the Respondents' insurance producer licenses, and

---

<sup>2</sup> It is unclear from the ALJ's recommendation whether she recommended the imposition of a total civil monetary penalty of \$5,000 or \$10,000 (\$5,000 for each of the Respondents) for Count One of the OTSC, as the Department in its February 2016 Brief requested that fines totaling \$15,000 for both Counts One and Two of the OTSC be imposed against the Respondents, jointly and severally.

<sup>3</sup> The Initial Decision indicates that the OTSC was issued on December 13, 2016. However, the OTSC is dated December 12, 2016.

impose civil monetary penalties and costs of investigation for alleged violations of the Producer Act. 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 – Respondent Bigica failed to pay his federal taxes from 1999 through 2006 and Respondents fraudulently concealed Bigica’s income, in violation of N.J.S.A. 17:22A-40a(2), (14) and (16), and N.J.S.A. 17:22A-40c; Respondents schemed to violate federal election laws through the use of straw donors and Bigica, LLC bank accounts, in violation of N.J.S.A. 17:22A-40a(2) and (16), and N.J.S.A. 17:22A-40c; and Respondent Bigica’s felony convictions constitute violations of N.J.S.A. 17:22A-40a(2) and (6).

Count Two – Respondent Bigica failed to pay New Jersey taxes or satisfy the judgment relating to same, in violation of N.J.S.A. 17:22A-40a(2) and (14).

On January 25, 2013, Respondents filed a request for a stay of the OTSC or, in the alternative, an administrative hearing to renew the stay request and oppose the OTSC (herein, “Answer”). Specifically, the Respondents’ Answer stated that Respondent Bigica had been sentenced to five years in federal prison on December 11, 2012, and requested a stay until his release from federal custody. Additionally, the Respondents requested that the proceedings be stayed pending the outcome of Bigica’s January 11, 2013 1033 Waiver Application, which sought the Department’s permission to engage in the business of insurance despite his criminal conviction that barred him working in the business of insurance. With regard to the allegations contained in Count One of the OTSC, the Respondents stipulated to entering into a voluntary plea agreement with the United States Attorney for the District of New Jersey on April 16, 2012,<sup>4</sup> for the following offenses: (1) interference with the administration of internal revenue laws in connection with the filing of Respondent Bigica’s individual tax returns for the years

---

<sup>4</sup> The Respondents’ Answer states that Bigica entered into a plea agreement on April 16, 2012; however, the transcript from the plea hearing is dated for May 9, 2012.

1999 through 2009, and (2) conspiracy to violate the Federal Election Campaign Act through the use of “straw donors.” However, the Respondents denied that Bigica LLC was charged with and/or pleaded guilty to the above-listed offenses. The Respondents’ Answer did not address the allegations contained in Count Two of the OTSC. The Respondents maintained that the Department did not expend resources for the investigation and prosecution of Respondent Bigica as Bigica notified the Department of his guilty plea in May 2012. Additionally, Respondents argue that revocation and the requested fines are excessive.

The Department transmitted the matter as a contested case to the Office of Administrative Law (“OAL”) on February 5, 2013, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. The matter was originally assigned to Administrative Law Judge Tahesha Way, who set a briefing schedule, and the matter was then transferred to ALJ Laura Sanders.

On February 6, 2015, the Department’s Motion for Summary Decision against the Respondents was filed, and it was opposed by the Respondents in a brief and accompanying affidavits on March 16, 2015. On April 24, 2015, the Department filed its reply to the Respondents’ opposition.

On May 27, 2015, the ALJ granted summary decision to the Department on Counts One and Two as alleged in the OTSC and recommended revocation of Respondent Bigica’s producer license and the imposition of civil monetary penalties against Respondents Bigica and Bigica LLC, jointly and severally, in the amount of \$5,000 each for the violations alleged in Count One of the OTSC, and Respondent Bigica, individually, in the amount of \$10,000 for the violations alleged in Count Two of the OTSC. The ALJ also recommended costs of investigation against Respondents Bigica and Bigica LLC, jointly and severally. The ALJ also concluded that a hearing would be necessary to determine whether Bigica LLC is vicariously liable for Bigica’s

New Jersey income tax judgment as alleged in Count Two of the OTSC. The ALJ further concluded that although the Commissioner has the authority to revoke Bigica LLC's producer license, the change of control to an unrelated designated responsible licensed producer ("DRLP"), Paul Molle ("Molle") and that Bigica LLC is being monitored by the Office of the United States Attorney militate against revocation.

As stated above, the Respondents requested a stay of this administrative action in their Answer to the OTSC. Specifically, the Respondents argued that Bigica has filed a Motion to Vacate, Set Aside, or Correct Sentence ("Motion") as a result of ineffective assistance of counsel in the federal criminal action against him, and therefore his guilty plea in the federal criminal action can no longer be treated as an admission of guilt. 05/27/2015 PSD at 5. The ALJ addressed this argument in the May 27, 2015 Partial Summary Decision. The ALJ determined that the Respondents failed to cite any authority for the proposition that the present action should be stayed pending the outcome of Motion filed in the federal action. Ibid. Whereas, as put forth by the Department, State v. Gonzalez, 142 N.J. 618 (1995) stands for proposition that the present action should move forward. Id. at 6. The ALJ ruled that under Gonzalez a guilty plea in a criminal case can be introduced in a civil case as "evidence [of] an admission, but it does not constitute conclusive proof of the facts underlying the offense." Gonzalez, supra, 142 N.J. at 629. Ibid. The ALJ further noted that Gonzalez discusses the implications of allowing an individual to repudiate statements that individual made under oath to a criminal judge where the criminal judge must be satisfied as to the factual basis of the plea, its voluntary nature, and that the plea was made "with an understanding of the nature of the charge and the consequences of the plea." Gonzalez, supra, 142 N.J. at 630. Ibid. With regard to Bigica, the ALJ found that prior to accepting Bigica's plea in the federal action, the Honorable Faith S. Hochberg, U.S.D.J.

extensively questioned Bigica regarding these factors. Ibid. Further, as Bigica has not been released pending the outcome of the Motion and the intent of the Producer Act is to maintain the integrity of the insurance industry in New Jersey, the ALJ held that the pending criminal Motion “does not operate as a bar to the proceeding with the [OTSC].” Ibid.

Additionally, Bigica requested in his Answer that this matter should be stayed pending a determination by the Commissioner on the 1033 Waiver Application and Request for Expedited Hearing that has been pending with the Department since January 11, 2013. See Answer at 2. However, the Department stated in its April 23, 2015 Brief<sup>5</sup> that “[t]he Commissioner did not act on Respondent Joseph Bigica’s request for a §1033 waiver seeking consent of the [Department] waiver in light of Respondent’s incarceration.” 05/27/2015 PSD at 6. Further, the Department stated that it seeks to revoke both Respondents’ producer licenses. Ibid. On this basis, the ALJ in the May 27, 2015 Partial Summary Decision declined to stay this proceeding, and granted partial summary decision as discussed above.

On September 18, 2015, the Department filed a new motion seeking summary decision as to the revocation of Bigica LLC’s producer license. On October 2, 2015, the Respondents filed a brief in opposition to the motion, pointing out that the Department’s motion failed to address the issue of New Jersey State taxes and argued that the Department inaccurately presents the case with regard to Bigica LLC’s operations over a two-year period. On November 23, 2015, the ALJ granted summary decision on the issue of revocation relating to Bigica LLC’s producer license and recommended that its license be revoked. The ALJ additionally noted that the issue relating to Bigica LLC’s involvement in the New Jersey tax deficiencies, as alleged in Count Two of the OTSC, would be set down for a hearing.

---

<sup>5</sup> The April 23, 2015 Brief referenced by the ALJ appears to be the Department’s Reply to the Respondents’ Opposition to the Department’s Motion for Summary Decision. The Department’s Reply was filed on April 24, 2015.

In a letter dated May 9, 2016, the Department advised the ALJ that it voluntarily dismissed Count Two of the OTSC as it related to Bigica LLC's liability for Bigica's individual tax deficiencies as alleged in Count Two of the OTSC. By Order dated May 9, 2016, the ALJ concluded that all issues have been resolved either by summary decision or dismissal.

Respondent Bigica's insurance producer license expired on June 30, 2013, and Respondent Bigica LLC's insurance producer license expired on May 31, 2015.

### ALJ'S FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS

Pursuant to N.J.A.C. 1:1-12.5(b), the ALJ noted that a motion for 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." Ibid. The ALJ further noted that N.J.A.C. 1:1-12.5(b) also provides that an adverse party must respond to a motion for summary decision by affidavit, which sets forth specific facts showing that there is a genuine issue that can only be determined in an evidentiary hearing. Id. at 6-7. The ALJ stated that the New Jersey Supreme Court has explained that when deciding a motion for summary judgment under R. 4:46-2,

a determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials present, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged dispute issue in favor of the non-moving party.

Id. at 7. (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)).

The ALJ found the following relevant facts in her grant of summary decision. Respondents Bigica and Bigica LLC were licensed insurance producers in New Jersey. Id. at 2. Bigica's license expired on June 30, 2013. Ibid. Bigica LLC was formed on March 26, 2007

and from that time through the period of the guilty plea, Bigica was the DRLP of Bigica LLC. Id. at 3. On April 25, 2013, responsibility for Bigica LLC passed to Molle, who became the new DRLP for Bigica LLC. 11/23/2015 PSD at 2. The ALJ noted that Bigica LLC is financially monitored by the Office of the U.S. Attorney General, and that the Respondents maintain that the monies from Bigica LLC are being disbursed for restitution. 05/27/15 PSD at 5. Bigica's affidavit notes that a Restitution Order prohibits any act that will financially harm or dissolve Bigica LLC. Ibid.

Following Molle's appointment as the DRLP of Bigica LLC, he came to New Jersey on occasion and worked with the Office of the U.S. Attorney General on receiving commissions and distributing funds. 11/23/15 PSD at 3. Although he attempted to obtain new business, he failed to do so. Id. As Bigica LLC had no further income, its bank accounts were closed. Ibid. Bigica LLC's license expired on May 31, 2015. Id. at 2. Thereafter, sometime in June 2015, Molle surrendered his New Jersey producer license, and as such, Bigica LLC currently has neither an active license nor a DRLP. Id. at 3.

Count One: Bigica failed to pay federal taxes from 1999 through 2006 and fraudulently concealed his income; Respondents perpetrated a scheme to violate federal elections laws through the use of straw donors; and Bigica was convicted of felonies relating to his failure to pay federal taxes and his violation of federal election laws

---

The ALJ noted that on May 9, 2012, Bigica pleaded guilty to the following two federal charges: (1) "corrupt interference with the administration of the Internal Revenue laws" relating to the filing of his individual U.S. income tax returns for the calendar years of 1999 through 2009 and his tax liability for those years, in violation of 18 U.S.C. § 7212(a); and (2) conspiracy to violate the Federal Election Campaign Act, in violation of 18 U.S.C. § 371 from 2005 through



2009. 05/27/2015 PSD at 3. Bigica agreed to pay restitution for the tax loss of \$2,141,836. Ibid. A separate plea or Information relating to Bigica LLC does not exist. Ibid.

In response to the Internal Revenue Service (“IRS”) charge, Bigica stated that he used “‘New Jersey bank accounts in the names of the Bigica companies,’ an account in his spouse’s name, and a credit card that was held by an employee and her husband, in part to prevent the IRS from identifying and seizing accounts.” Ibid. Bigica also stated that he used a check-cashing service to cash \$2.5 million in checks that were made “payable to [himself], the Bigica companies, Open MRI and Imaging of Newark PA, a company with which [he was] affiliated, and others.” Id. at 3-4. As it related to the Federal Election Campaign Act charge, Bigica stated that he used two New Jersey bank accounts, one in the name of “the Bigica companies” and another in his spouse’s name in order to reimburse approximately \$98,600 to individuals for contributions that were allegedly made by them to the campaign committee of a federal candidate. Id. at 4.

The Department argued that the federal criminal conviction arose out of Bigica’s use of Bigica LLC, which “served as a conduit for Respondent Bigica’s illicit activities.” Ibid. Bigica maintained that although he was the owner and DRLP for Bigica LLC, he kept Bigica LLC separate from his financial issues that affected his other companies. Ibid. Specifically, Bigica maintained that he reported income from Bigica LLC, paid taxes on that income, and used a secretary’s credit card in order to access monies that were earned as his commissions. Ibid. Further, Robert Fabiano, Bigica’s accountant since 2000 and Bigica LLC’s accountant since 2008, stated in an affidavit that Bigica provided details of his personal expenses paid for through Bigica LLC. Ibid. Bigica’s personal expenses were taken as compensation draws and accounted for in appropriate tax filings and by applicable accounting standards. Ibid. The monies paid to

Bigica LLC were paid by insurance carriers using 1099s and then accounted for in tax filings and by applicable accounting standards. Ibid.

Count One of the Information relating to Bigica's federal conviction states that "(a) Defendant JOSEPH BIGICA individually, and through his companies, Joseph Bigica Inc. and Joseph Bigica LLC (collectively, the 'Bigica Companies'), was an independent insurance broker." Ibid. The Information additionally states that "[f]rom in or about March 2006 to in or about March 2011 . . . BIGICA used and caused to be used bank accounts in the names of the Bigica Companies to pay for personal expenses" and thereafter, listed expenditures. Ibid. The Information further notes that Bigica used his spouse's bank account to deposit proceeds from the Bigica Companies and used a credit card in the name of an employee of the Bigica Companies and her husband in order to pay Bigica's personal expenses. Ibid. The Information also stated that Bigica cashed 241 checks that totaled approximately \$2.5 million, which was made payable to himself, "the Bigica Companies, Open MRI & Imaging of Newark, PA . . . and others." Id. at 4-5.

Bigica claims that the only company that was directly named in the list of transactions that supported the federal government's case was Open MRI & Imaging of Newark, PA. ("Open MRI"). Id. at 5. However, the ALJ noted that the Presentence Investigation Report, while addressing the business holdings, notes the existence of Open MRI, Bigica LLC, Joseph Bigica, Inc., an S Corporation, and Jefferson Imaging Management, Inc. Ibid.

Bigica argues that the guilty plea entered based on the Information related to his personal failure to pay income taxes and his use of Joseph Bigica, Inc. and Open MRI to conceal income and pay straw donors. Id. at 7. The ALJ noted that Bigica is correct about the lack of specificity in the Information and guilty plea and that neither specifically points to Bigica LLC. Ibid.

However, the ALJ stated that the Information does define “the Bigica Companies” as Joseph Bigica, Inc. and Bigica, LLC. Ibid. Additionally, Bigica informed the Honorable Faith S. Hochberg, U.S.D.J., under oath, that he understood what he was doing and answered “yes” to using New Jersey bank accounts “in the names of the Bigica companies, a New Jersey bank account in the name of [his] spouse, and a credit card held by one of [his] employees and her husband, in part to prevent the IRS from identifying [his] income and assets.” Ibid. Bigica also said “yes” to having cashed checks in the amount of \$2.5 million, which were made payable to himself, “the Bigica companies, Open MRI and Imaging of Newark PA, . . . and others . . . in part to obstruct and impede the IRS from collecting the taxes that [he] owed.” Ibid.

In light of the foregoing, the ALJ found that Bigica’s statements made under oath constituted an admission of the acts by Bigica LLC. Ibid. The ALJ held that in regards to Count One of the OTSC, there are no genuine issues of material fact and the Department has shown that Bigica failed to pay federal income tax, in violation of N.J.S.A. 17:22A-40a(14)<sup>6</sup> and used straw donors as a means of violating the Federal Election Campaign Act and channeled money through various persons and companies as a means of hiding income, in violation of N.J.S.A. 17:22A-40a(16)<sup>7</sup>. Id. at 7-8. The ALJ further held that these actions constitute a violation of any insurance statute and as such, the Department also has proven a violation of N.J.S.A. 17:22A-40a(2). Id. at 8. Moreover, the ALJ held that Bigica’s felony convictions are a violation of N.J.S.A. 17:22A-40a(2) and N.J.S.A. 17:22A-40a(6). Id. at 9.

---

<sup>6</sup> The ALJ noted that Bigica’s failure to pay federal income tax is a violation of N.J.S.A. 17:22-40a(14); however, this appears to be a typographical error as the correct statutory reference to the Producer Act violation as set forth in the OTSC is N.J.S.A. 17:22A-40a(14).

<sup>7</sup> The ALJ noted that Bigica’s use of straw donors as a means to violate the federal election statute is a violation of N.J.S.A. 17:22-40a(16); however, this appears to be a typographical error as the correct statutory reference to the Producer Act violation as set forth in the OTSC is N.J.S.A. 17:22A-40a(16).

Lastly, the ALJ noted that N.J.S.A. 17:22A-40c gives the Commissioner the authority to suspend, revoke, or refuse to issue a license “if the [C]ommissioner finds, after hearing, that an individual licensee’s violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the [C]ommissioner nor corrective action taken.” Id. at 10. The ALJ stated that the guilty plea to the Federal Election Campaign Act violation through the use of “the Bigica Companies,” which included Bigica LLC, qualifies as a violation that should have been reported and corrected. As such, the ALJ concluded that the Department has proven the charge and the related violation of N.J.S.A. 17:22A-40c<sup>8</sup>.

**Count Two: Respondent Bigica failed to pay New Jersey taxes or  
satisfy the judgment relating to same**

The ALJ noted that in August 2011, the New Jersey Division of Taxation obtained a judgment against Bigica for unpaid State income taxes. Id. at 5. Bigica argues that treating this judgment as an accusation is unfair because an Assistant United States Attorney General is in charge of both Respondents’ finances, which includes court-ordered restitution, and an attorney has been retained to draft an acceptable offer and compromise on the outstanding judgments. Ibid.

While the Respondents contend that the responsibility for the New Jersey taxes, which are the subject of the tax judgment issued against Bigica, is out of their hands, the ALJ noted that their argument does not extinguish the fact that a judgment exists. Id. at 9. The ALJ held that, as it relates to Count Two of the OTSC, there is a New Jersey tax judgment on file and there are no material facts in dispute with regard to Bigica’s liability for the tax judgment. Ibid. As such, the

---

<sup>8</sup> In the May 27, 2015 Partial Summary Decision, the ALJ discussed N.J.S.A. 17:22A-40c after discussing her findings as to Count Two of the OTSC. While the ALJ’s conclusion came after her discussion of Count Two of the OTSC, it clearly relates to her findings as to Count One of the OTSC.

ALJ found that the Department has proven a violation of N.J.S.A. 17:22A-40a(14) against Bigica. Ibid.

However, the ALJ noted that the OTSC did not use the term “Respondents” in setting forth the facts supporting the failure to pay State taxes, which is unlike the facts set forth in Count One of the OTSC. Ibid. The ALJ further noted that the only document supporting the facts alleged in Count Two of the OTSC is a tax judgment against Bigica that was entered on August 25, 2011. Ibid. The tax judgment does not set forth the years it covers. Ibid. The ALJ stated that, while it may be a logical inference that the State tax deficiency relates to the same facts as the federal tax issues alleged in Count One of the OTSC, it is not enough for summary decision to be issued. Ibid. The Respondents contend that Bigica LLC was lawful as it relates to its tax matters and supported same with an affidavit, which raises an issue as to a material fact. Ibid. As such, the ALJ held that Bigica LLC’s liability for Bigica’s New Jersey income tax judgment is not appropriate for summary decision. Ibid.

In the Department’s September 2015 Motion for Summary Decision, the Department did not offer any new information regarding the New Jersey tax deficiencies as it related to Bigica LLC. 11/23/15 PSD at 4. Further, by letter dated May 9, 2016, the Department advised the ALJ that it wished to dismiss Count Two of the OTSC as it related to Bigica LLC’s liability for Bigica’s individual New Jersey income tax only. 05/09/16 Initial Decision at 2. In light of the Department’s letter, the ALJ issued the May 9, 2016 Initial Decision and found that all issues had been resolved either by summary decision or dismissal. Ibid.

## ALJ'S FINDINGS AS TO THE PENALTY AGAINST RESPONDENTS

### Revocation of Respondents' Producer Licenses

The ALJ stated that the Commissioner seeks to revoke Bigica's insurance producer license based upon violations of N.J.S.A. 17:22A-40a(2), (6), (14), and (16). 05/27/15 PSD at 11. Bigica urged for leniency because he argues that his financial problems related to his other businesses and not to businesses using his insurance producer license. Ibid. Bigica stated that "[s]ince [his] initial license in 1980, there was never a blemish on [his] license, never a client complaint, never a question on where [a] premium went or if policies were secured, and never an error or omissions claim." Ibid. Bigica further stated that his license is currently expired and as such, he cannot engage any clients until after his release from prison and until after he applies for a license and obtains a decision from the Department. Ibid. Bigica argues that in light of the foregoing, "[r]evocation is unjustified and unneeded." Ibid. The Department, however, contends that insurance producers act in a fiduciary capacity and are held to a high standard of conduct. In re Parkwood Co., 98 N.J. Super. 263, 268 (App. Div. 1963). Ibid.

The ALJ noted that the facts presented do not indicate that Bigica's statement regarding how he handled day-to-day insurance matters was false. Ibid. However, the ALJ stated that the admissions that Bigica made regarding the straw donations and his manipulation of companies and funds in order "to avoid taxation are extremely serious, and do implicate his trustworthiness. . . ." Ibid. Further, the ALJ stated that the factors discussed in Kimmelman v. Henkles & McCoy, Inc., 108 N.J. 123, 137-39 (1987), below, do not lead to a conclusion for leniency with regard to Bigica's insurance producer license. Ibid. As such, the ALJ concluded that the revocation of Bigica's license is appropriate. Ibid.

In regards to Bigica LLC's insurance producer license, the ALJ noted that the Department argues that the license must be revoked because "Bigica LLC could not have acted

on its own” and it served as “a conduit to hide assets on behalf of Respondent Bigica absent his direction.” Ibid. The Department further argued that “[f]or all intents and purposes, Respondent Bigica was Bigica LLC. He was the owner and controlled the agency.” Ibid. Additionally, N.J.A.C. 11:17A-1.6(c) provides that “[l]icensed partners, officers and directors, and all 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 licensee, any of its branch offices, its other licensed officers or partners, and its employees.” Ibid. The ALJ states that the Department relies on Commissioner v. Goncalves, OAL Dkt. No. BKI 31188-03, Initial Decision (12/03/03), Final Decision and Order (05/24/04), OAL Dkt. No. BKI 3301-05, On Remand, Initial Decision (11/17/05), Final Decision and Order (02/15/06) in support of its argument that Bigica LLC be held vicariously and directly responsible for the actions of Bigica. Ibid. The ALJ noted that in Commissioner v. Goncalves, supra, the Commissioner found that a licensed agent faxed an altered automobile photo inspection to an insurance company on a cover sheet with the agency’s name was evidence of direct participation by the agency, even if one of the owners had no knowledge that a fraudulent action had occurred. Ibid.

The ALJ stated that the Department established that Bigica used Bigica LLC to engage in fraudulent conduct and the Producer Act provides the Commissioner with the authority to hold Bigica LLC responsible, which includes revoking Bigica LLC’s license. Ibid. However, the ALJ stated that Bigica LLC is under the stewardship of an unrelated DRLP, Molle, and is financially monitored by the Office of the United States Attorney General. Ibid. The ALJ believed these factors to be substantially mitigating, and that it is a public good that the monies from Bigica LLC are being disbursed for restitution. Ibid. As such, the ALJ initially concluded

that “while the Commissioner has authority to revoke [Bigica] LLC’s license . . . the change of control and use of the proceeds are sufficient to mitigate against revocation.” Ibid.

However, the Department, in its September 2015 Motion for Summary Decision, argued that Bigica LLC’s license should be revoked on the grounds that it did not have an insurance producer at the place of business and because any mitigating factor claimed by the Respondents is baseless. 11/23/15 PSD at 4. Specifically, the Department cited N.J.A.C. 11:17A-1.6(a), which provides that “[e]ach place of business maintained by an insurance producer for the purpose of transacting the business of insurance shall be under the direct supervision of an insurance producer.” Ibid. Here, the ALJ noted that Molle resided in Florida and the Department questioned his ability to provide direct supervision over Bigica LLC. Ibid. Although the Respondents objected to the characterization, the Department argued that Molle’s appointment was a “sham,” as Molle did not identify any other persons working for Bigica LLC and failed to show any new business that was written during his time as the DRLP of Bigica LLC. Ibid.

The ALJ stated that Molle, who was a licensed New Jersey insurance producer and resident of the State of Florida, was the DRLP for Bigica LLC for a period of two years, which ended in June 2015 when he voluntarily terminated his insurance license. Id. at 4-5. He worked with the United States Attorney General’s Office and failed to write new business. Ibid. No further monies are due to Bigica LLC, its accounts have been closed, and it has not had a DRLP since June 2015. Ibid.

The ALJ noted that pursuant to N.J.S.A. 17:22A-40a(2), the Commissioner may suspend, revoke, or refuse to issue or renew an insurance producer’s license for “[v]iolating any insurance laws, or violating any regulation, subpoena or order of the [C]ommissioner. . . .” Ibid. The ALJ



noted that Bigica LLC has no DRLP and is therefore in violation of N.J.A.C. 11:17A-1.6(a), which therefore, is also a violation of N.J.S.A. 17:22A-40a(2). As such, the ALJ noted that “[g]iven the extremely serious nature of the conduct at issue with regard to Bigica himself, the use of [Bigica] LLC as a means to violate the tax laws, the fact that it no longer serves a public purpose with regard to restitution, and finally, that it has no DRLP . . .” revocation of Bigica LLC’s producer license was warranted. Id. at 6.

#### Monetary Penalty Against Respondents

The ALJ determined that the imposition of civil monetary penalties, costs, and the revocation of the Respondents’ insurance producer licenses were appropriate in this matter. The ALJ noted that pursuant to the Producer Act, the Commissioner has the power to revoke or refuse to renew a license or to impose civil monetary penalties not to exceed \$5,000 for the first offense and \$10,000 for each subsequent offense. 05/27/15 PSD at 10.

The ALJ noted that the standards for determining the appropriateness of civil monetary penalties are as set forth in Kimmelman, supra, 108 N.J. at 137-39. Ibid. These factors include: (1) the good faith or bad faith of the producer; (2) the producer’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 or treble-damages actions; and (7) past violations. Ibid.

With regard to the first factor, the ALJ stated that the commission of fraud is always an act of bad faith. Ibid. The ALJ noted that here, the bad faith committed involves both Bigica, personally, and his use of Bigica LLC to cash checks in order to conceal his total income and tax liabilities. Ibid.

As to the second factor, the ALJ stated that as Bigica is in prison and the profits from Bigica LLC are being used for restitution, this suggests a limited ability to pay. Ibid.

The ALJ noted that, as to the third factor, Bigica concealed more than \$1.5 million<sup>9</sup> in income and tax liabilities, which is a substantial profit. Ibid. However, the ALJ stated that in spite of his guilty plea and in relation to the federal election law violation, Bigica maintains that he did not actually obtain a business or financial advantage from the straw donations, and “that they arose from an unsuccessful effort to save other, floundering businesses.” Ibid.

Further, the ALJ stated that as to factor four, “hidden campaign contributions have the potential to subvert public confidence in the elections process, and the disregard for valid tax obligations can damage public perception of fairness in the tax system.” Ibid.

With regard to the fifth factor, the ALJ noted that the Respondents’ concealment of income occurred over a seven-year period, from 1999 through 2006. Id. at 11.

The ALJ noted that in relation to factor six, Bigica pleaded guilty to his criminal activities; however, Bigica LLC was not separately the subject of a criminal action. Ibid.

Lastly, the ALJ noted that there has been no indication that the Respondents committed any past violations. Ibid.

Based upon the above analysis, the ALJ recommended that civil monetary penalties be imposed against Bigica and Bigica LLC, jointly and severally, in the amount of \$5,000 each<sup>10</sup> for Count One of the OTSC and against Bigica, personally, in the amount of \$10,000 for Count Two of the OTSC. Ibid.

---

<sup>9</sup> The ALJ incorrectly notes that Bigica concealed \$1.5 million in income and tax liabilities. Bigica avoided over \$2.1 million in federal taxes between the years of 1999 and 2006. See Information, attached to Department’s February 2015 Brief as Exhibit B, at 5.

<sup>10</sup> As previously mentioned, it is unclear from the ALJ’s recommendation whether she recommended the imposition of a total civil monetary penalty of \$5,000 or \$10,000 (\$5,000 for each of the Respondents) for Count One of the OTSC, as the Department, in its February 2015 Brief requested the total amount of \$15,000 be imposed against the Respondents.

### EXCEPTIONS

By letter dated May 23, 2016, the Office of the Attorney General, on behalf of the Department, submitted timely Exceptions to the Initial Decision. The Respondents did not submit any Exceptions.

In its Exceptions, the Department stated that it concurs with the ALJ's Initial Decision, which incorporated both the May 27, 2015 Partial Summary Decision and the November 23, 2015 Partial Summary Decision, as it relates to the violations found, the revocation of Bigica and Bigica LLC's insurance producer licenses, and the level of civil penalties imposed. However, the Department requested clarification relating to the ALJ's reasoning for revoking Bigica LLC's insurance producer license as outlined in the November 23, 2015 Partial Summary Decision. Specifically, the Department stated that although the ALJ correctly noted that the fact that Bigica LLC no longer had a DRLP, as required by N.J.S.A. 17:22A-32b(2), Bigica LLC was also no longer under the direct supervision of an insurance producer, as required by N.J.A.C. 11:17A-1.6(a).

### 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. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962) and In re Polk, 90 N.J. 550, 560 (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).

### Allegations Against Respondents

For all of the reasons set forth in the Initial Decision, I concur that summary decision is appropriate as to both Counts of the OTSC issued against the Respondents. As found by the ALJ, Respondents failed to adduce evidence that creates a genuine issue as to any material fact and their defenses as pled fail as a matter of law. The Department is, therefore, entitled to prevail as a matter of law. As the Department dismissed Count Two, as it relates to Bigica LLC's liability for Bigica's individual New Jersey income tax, I make no determinations or conclusions as to same.

Count One: Bigica failed to pay federal taxes from 1999 through 2006 and fraudulently concealed his income; Respondents perpetrated a scheme to violate federal elections laws through the use of straw donors; and Bigica was convicted of felonies relating to his failure to pay federal taxes and his violation of federal election laws

Count One of the OTSC alleges that Respondent Bigica failed to pay his federal taxes from the years 1999 through 2006 and the Respondents concealed Bigica's income, in violation of N.J.S.A. 17:22A-40a(2), (14), and (16), and N.J.S.A. 17:22A-40c. Count One of the OTSC also alleges that the Respondents schemed to violate federal election laws through the use of straw donors and Bigica LLC bank accounts, in violation of N.J.S.A. 17:22A-40a(2) and (16), and N.J.S.A. 17:22A-40c. Lastly, Count One of the OTSC alleges that Respondent Bigica's guilty plea constitutes violations of N.J.S.A. 17:22A-40a(2) and (6).

I concur with the ALJ that the Department proved the allegations in Count One of the OTSC, and I FIND that the Respondents' actions, as alleged in Count One of the OTSC and that relate to Bigica's failure to pay his federal income taxes from the years 1999 through 2006 and the Respondents' concealment of Bigica's income, violated N.J.S.A. 17:22A-40a(2) (violating

any insurance law or regulation) and (14) (failure to pay income tax or comply with any administrative or court order directing payment of income tax pursuant to Title 54A of the New Jersey Statutes).

I further concur with the ALJ and I FIND that the Respondents' actions, as alleged in Count One of the OTSC and that relate to Respondents' perpetration of a scheme to violate federal elections laws through the use of straw donors, violated N.J.S.A. 17:22A-40a(2) (violating any insurance law or regulation) and (16) (committing any fraudulent act).

I further concur with the ALJ and I FIND that the Respondents' actions, as alleged in Count One of the OTSC and that relate to Bigica's conviction for interference with the administration of the internal revenue laws in connection with the filing of Bigica's individual tax returns for the tax years 1999 through 2009 and conspiracy to violate the Federal Election Campaign Act through the use of straw donors, violated N.J.S.A. 17:22A-40a(2) (violating any insurance law or regulation) and (6) (being convicted of a felony or crime of the fourth degree or higher).

However, the ALJ made no determination as to whether the Respondents' conduct, as it relates to Bigica's failure to pay his federal income taxes from the years 1999 through 2006 and the Respondents' concealment of Bigica's income was also a violation of N.J.S.A. 17:22A-40a(16), which prohibits an insurance producer from "[c]ommitting any fraudulent act." Here, the record shows that Respondent Bigica pleaded guilty to the federal charge of "corrupt interference with the administration of the Internal Revenue Laws" in relation to the filing of his "U.S. Individual Income Tax Returns for the calendar years 1999 through 2009, and [his] tax liability to the United States for such calendar years." 05/27/15 PSD at 3. Specifically, he was charged with illegally avoiding over \$2.1 million in federal taxes between the aforementioned

calendar years. See Information, attached to Department's February 2015 Brief as Exhibit B, at 5. Bigica admitted in his plea that he used New Jersey bank accounts in the names of his spouse and the Bigica Companies, which included Respondent Bigica LLC, and a credit card held by an employee and her husband, in part to prevent the IRS from identifying and seizing accounts. 05/27/15 PSD at 3. Bigica also admitted to using a check cashing company to cash \$2.5 million in checks that were made payment to himself, the Bigica Companies, and others. Id. at 3-4. Based upon these facts, the record is clear that the Respondents' actions constitute a "fraudulent act" as set forth in the Producer Act. As such, I MODIFY the Initial Decision and FIND that the Respondents' actions, as alleged in Count One of the OTSC and that relate to Bigica's failure to pay his federal income taxes from the years 1999 through 2006 and the Respondents' concealment of Bigica's income, are also a violation of N.J.S.A. 17:22A-40a(16).

The ALJ made no determination as to whether Bigica LLC's alleged failure to notify the Department of Bigica's violations relating to his failure to pay federal income taxes and concealment of his income was a violation of N.J.S.A. 17:22A-40c. However, the ALJ did find that Bigica LLC's alleged failure to notify the Department of Bigica's violation relating to his use of straw donors in violation of the Federal Election Campaign Act constituted a violation of N.J.S.A. 17:22A-40c. N.J.S.A. 17:22A-40c provides that

The insurance producer license of a business entity may be suspended, revoked or refused if the [C]ommissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the [C]ommissioner nor corrective action taken.

At all times relevant, Bigica was the owner and DRLP of Bigica LLC. 05/27/15 PSD at 3. As there are no facts in the record to suggest that, prior to Bigica's guilty plea, Bigica LLC

had any other owners, partners, officers, or managers acting on behalf of the business entity, it was the responsibility of Bigica to report his own violations to the Department, pursuant to N.J.S.A. 17:22A-40c. However, the facts in the record appear to be insufficient to find that Bigica LLC was in violation of N.J.S.A. 17:22A-40c by its alleged failure to alert the Department of Bigica's violations<sup>11</sup>. In fact, in a letter dated May 31, 2012, Bigica, through his attorney, advised the Department's Supervising Investigator, Joseph McDougal, that Bigica entered a plea agreement with the United States Attorney for the District of New Jersey on April 16, 2012<sup>12</sup> relating to the following offenses (1) "interference with the administration of internal revenue laws in connection with the filing of Mr. Bigica's individual tax returns for the tax years 1999 through 2009 and the related tax liability;" and (2) "conspiracy to violation the Federal Election Campaign Act—the use of 'straw donors.'" See Respondents' May 31, 2012 letter attached to Respondents' Answer to the OTSC. The May 31, 2012 letter also stated that a copy of the "Plea Agreement" was attached and advised the Department that Bigica was in the process of filing a 1033 Waiver application with the Department. Ibid.

N.J.S.A. 17:22A-40a(18) requires an insurance producer to report his or her conviction of any crime, indictment, or filing of any formal criminal charges to the Commissioner within 30 days. Here, in or around April 2012, a two-count Information was issued against Bigica in the United States District Court for the District of New Jersey. On or about May 9, 2012, Bigica's guilty plea relating to the charges set forth in the Information was entered. See Transcript of

---

<sup>11</sup> It is unclear from the OTSC exactly whether the "violations" Bigica LLC was required to report to the Department related to Bigica's underlying conduct as it occurred or filing of formal criminal charges against Bigica in the Information and any subsequent conviction.

<sup>12</sup> While Bigica's attorney states that Bigica entered a plea agreement on April 16, 2012, the transcript of the plea hearing is dated for May 9, 2012. While Bigica may have entered a plea agreement on April 16, 2012, it is assumed that the plea was not entered until the date of the hearing on May 9, 2012.

Bigica's plea, attached to Department's February 2015 Brief as Exhibit C, at 1. Then, on or about May 31, 2012, Bigica notified the Department of his guilty plea. There is no documentary evidence in the record to show whether Bigica notified the Department within 30 days of the filing of the criminal charges against him or any subsequent conviction. However, the record supports that Bigica did notify the Department within 30 days of the entry of his guilty plea. Based upon the lack of sufficient facts in the record to support a conclusion that Bigica LLC was in violation of N.J.S.A. 17:22A-40c for failing to alert the Department of Bigica's violations, I make no finding as to whether Bigica LLC's actions, as alleged in Count One of the OTSC, constitute a violation of N.J.S.A. 17:22A-40c and MODIFY the Initial Decision accordingly.

**Count Two: Respondent Bigica failed to pay New Jersey taxes or  
satisfy the judgment relating to same**

Count Two of the OTSC alleges that Respondent Bigica failed to pay his New Jersey taxes or satisfy the August 25, 2011 judgment that was entered against him relating to same, in violation of N.J.S.A. 17:22A-40a(2) and (14). I concur with the ALJ that the Department proved the allegations in Count Two of the OTSC, and I FIND that the Bigica's actions, as alleged in Count Two of the OTSC, violated N.J.S.A. 17:22A-40a(14) (failure to pay income tax or comply with any administrative or court order directing payment of income tax pursuant to Title 54A of the New Jersey Statutes).

However, the ALJ made no determination as to whether Bigica's conduct, as alleged in Count Two of the OTSC, was also a violation of N.J.S.A. 17:22A-40a(2), which prohibits an insurance producer from "[v]iolating any insurance laws, or violating any regulation, subpoena or order of the [C]ommissioner or of another state's insurance." Here, the ALJ found that Bigica's failure to pay New Jersey income tax or satisfy the judgment entered against him by the New Jersey Division of Taxation on August 25, 2011 was a violation of Producer Act,



specifically, N.J.S.A. 17:22A-40a(14). As such, I MODIFY the Initial Decision and FIND that Bigica's actions, as alleged in Count Two of the OTSC, also constitute a violation of N.J.S.A. 17:22A-40a(2).

Penalty against Respondents Bigica and Bigica LLC

Revocation of Respondents' Producer Licenses

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

A licensee's honesty, trustworthiness, and integrity are of paramount concern, since an insurance producer acts as a fiduciary to both the consumers and insurers they represent. 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). Additionally, a licensed producer is better placed than a member of the public to defraud an insurer. Strawbridge v. New York Life Ins. Co., 504 F.Supp. 824 (1980). As such, a producer is held to a high standard of conduct, and should fully understand and appreciate the effect of fraudulent or irresponsible dealing on the industry and on the public.

In decisions by prior Commissioners in similar cases, revocation has consistently been imposed upon licensees who have personally engaged in fraudulent acts, as both insureds and insurers must place their trust in the information insurance producers convey to them. See Commissioner v. Hohn, OAL Dkt. No. BKI 12444-11, Initial Decision (11/01/12), Final Decision and Order (03/18/13). Moreover, the Commissioner has consistently held that misconduct involving "misappropriation of premium monies, bad faith and dishonestly compels

license revocation.” Commissioner v. Strandkov, OAL Dkt. No. BK1 03451-07, Initial Decision (09/25/08), Final Decision and Order (02/04/09).

Our strong policy is to instill public confidence in both insurance professionals and the industry as a whole. In re Parkwood Co., supra. Courts have long 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. See Sheeran v. Nationwide Mutual Insurance Company, 80 N.J. 548, 559 (1979). As evidenced by prior decisions, only the existence of extraordinary mitigating factors can form a basis for withholding the sanction of license revocation in cases involving direct personal conduct on the part of a licensee that constitutes fraud. See Goncalves, supra, Commissioner v. Nicolo, OAL Dkt. No. BK1 10722-04, Initial Decision, (05/31/06), Final Decision and Order (10/12/06), and Commissioner v. Dobrek and Mr. Lucky Bail Bonds, Inc., OAL Dkt. No. BK1 00361-05, Initial Decision (12/26/06), Final Decision and Order (03/26/07). The typical mitigating factors of restitution, inexperience, lack of prior negative history, motivations and pressures of the misconduct, and the possibility of reform cannot form a basis to support a sanction other than revocation in cases involving the misappropriation of client funds. Commissioner v. Ladas, OAL Dkt. BK1 0947-02, Initial Decision (02/05/04), Final Decision and Order (06/22/04).

#### Revocation of Bigica's Insurance Producer License

I agree with the ALJ's findings that Bigica's actions demand the revocation of his insurance producer license. As the aforementioned decisions show, revocation is appropriate in almost all cases wherein a licensed insurance producer has engaged in fraud, misappropriation of premium monies, bad faith, and dishonesty. Here, Bigica engaged in several years of fraudulent conduct and used his licensed agency, Bigica LLC, as a conduit through which to perpetrate his

fraud. Specifically, Bigica executed a scheme to hide his actual, taxable income for a period of at least eight years from 1999 through 2006 and avoided over \$2.1 million in federal taxes. 05/27/2015 PSD at 3; and Information, attached to Department's February 5, 2015 Brief as Exhibit B, at 5. Further, Bigica admitted in his guilty plea that he avoided performing personal financial transactions through accounts in his own name and instead, used New Jersey bank accounts in the names of the "Bigica companies," including Bigica LLC, and his spouse and used a credit card in the name of his employee and her husband in order to prevent the IRS from identifying his income and assets and from seizing accounts that were held in his name in order to satisfy his tax liability. 05/27/2015 PSD at 3. Bigica additionally used a check-cashing business to cash approximately 241 checks totaling approximately \$2.5 million that was payable to himself, the Bigica Companies, including Bigica LLC, and other companies affiliated with Bigica in order to impede the IRS from collecting the taxes he owed. Id. at 3-4.

Additionally, from April 2005 through May 2009, Bigica knowingly and intentionally circumvented the dollar amount limits permitted for contributions that an individual may make to a federal candidate by conspiring with others to make contributions drawn on their own accounts. See Transcript of Bigica's plea, attached to Department's February 2015 Brief as Exhibit C, at 33. Bigica then made payments in the amount of \$98,600 to fund and reimburse those persons, in violation of the Federal Election Campaign Act. 05/27/2015 PSD at 4. Lastly, in August 2011, the New Jersey Division of Taxation obtained a judgment against Bigica for unpaid state income taxes. Id. at 5. While Bigica alleges that an attorney has been engaged to draft an acceptable offer and compromise on the outstanding judgment, Bigica still failed to pay his income tax obligation and still has yet to satisfy the judgment. Ibid.

While Bigica seeks leniency with regard to the revocation of his producer license as he alleges that his financial problems relate to his other businesses and not his insurance producer business, he clearly engaged in several years of fraudulent behavior that overflowed into his insurance business by using Bigica LLC to hide his income and personal finances from the Federal Government in order to protect his assets from being discovered and seized. His actions clearly contravene the standards of honesty, trustworthiness, and integrity that are expected and demanded of insurance producers. As such, and even though Bigica's insurance producer license is currently expired, I agree with the ALJ that the Bigica's actions compel revocation of his insurance producer license.

#### Revocation of Bigica LLC's Insurance Producer License

I agree with the ALJ's findings that Bigica LLC's insurance producer license should also be revoked. Prior to April 25, 2013, Bigica was the DRLP of Bigica LLC. 11/23/15 PSD at 2. Thereafter, Molle, a resident of the State of Florida, replaced Bigica as the DRLP and attempted to write new business for Bigica LLC. Id. at 3. He only came to New Jersey on occasion and indicated that he was unaware of any new accident, health, or sickness policies that were written between June 4, 2013 and May 31, 2015. Ibid. Molle additionally stated that he was unaware of anyone working in Bigica LLC's Franklin Lakes' office. Ibid. Further, there is currently no commission income being issued to Bigica LLC and its bank accounts have all been closed. Ibid. Bigica LLC's insurance producer license expired on May 31, 2015, and sometime in June 2015, Molle surrendered his New Jersey insurance producer license. Id. at 2-3. This left Bigica LLC without an insurance producer license, which is required by N.J.S.A. 17:22A-32b ("A business entity acting as an insurance producer shall obtain an insurance producer license."). It further left Bigica LLC without a DRLP, as required by N.J.S.A. 17:22A-32b(2) ("The business

entity has designated a licensed insurance producer or producers responsible for the business entity's compliance with the insurance laws, rules and regulations of this State.”) and without the direct supervision of an insurance producer, as required by N.J.A.C. 11:17A-1.6(a) (“Each place of business maintained by an insurance producer for the purpose of transacting the business of insurance shall be under the direct supervision of an insurance producer.”).

Moreover, N.J.S.A. 17:22A-40a(2) states that the Commissioner may “place on probation, suspend, revoke or refuse to issue or renew an insurance producer’s license” for “[v]iolating any insurance laws, or violating any regulation. . . .” Here, as the ALJ noted, Bigica LLC has no DRLP and is therefore in violation of N.J.S.A. 17:22A-32b(2), “which in turn brings its current situation within the scope of N.J.S.A. 17:22A-40a(2).” Additionally, as stated above, Bigica LLC currently has an expired insurance producer license, in violation of N.J.S.A. 17:22A-32b and is without the direct supervision of an insurance producer, in violation of N.J.A.C. 11:17A-1.6(a). Further, as stated by the ALJ, Bigica LLC was used by Bigica himself as a means to violate tax laws, no longer is serving a public purpose with regard to restitution as no new business has been written and its bank accounts have been closed, and it has no DRLP. As such, I agree with the ALJ’s conclusion and FIND that revocation of Bigica LLC’s insurance producer license is appropriate. However, for the reasons set forth above and as requested by the Department in its Exceptions, I MODIFY the Initial Decision to find that Bigica LLC not only lacked a DRLP, in violation of N.J.S.A. 17:22A-32b(2), but also that Bigica LLC was not under the direct supervision of an insurance producer, in violation of N.J.A.C. 11:17A-1.6(a)

#### Monetary Penalty Against Respondents

As discussed by the ALJ, under Kimmelman, 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. 17:22A-45 upon insurance producers (up to \$5,000 for the first violation and up to \$10,000 for any subsequent violations). No one Kimmelman factor is dispositive for or against fines and penalties. Kimmelman, supra, 108 N.J. at 139 (“[t]he weight to be given to each of these factors by a trial court in determining . . . the amount of any penalty, will depend on the facts of each case”).

The record herein indicates the following with respect to these factors. The first Kimmelman factor addresses the good faith or bad faith of the violator. I agree with the ALJ that Respondents’ fraudulent conduct in violation of federal and state law demonstrates bad faith and weighs in favor of a significant monetary penalty.

As to the second Kimmelman factor, Bigica had significant assets prior to incarceration. However, Respondents argue that Bigica, himself, is confined to federal prison, was ordered to pay restitution in the amount of \$2,141,836, plus interest, and fined \$255,000 in his federal criminal prosecution. See Bigica affidavit, Par. 14. Further, Respondents argue that Bigica LLC’s income is controlled by the United States Attorney General. See Bigica affidavit, Par. 18 and Fabiano affidavit, Par. 5. However, as stated above, Bigica LLC has not written new business and its bank accounts have been closed. While the Respondents contend a limited ability to pay, no proofs, other than affidavits, have been provided regarding the Respondents’ ability to pay the fines imposed. Respondents who claim an inability to pay civil penalties bear the burden of proving their incapacity. Goldman v. Shah, OAL Dkt. No. BKI 11903-05, Initial Decision (04/15/08), Final Decision and Order (09/02/08). Regardless, an insurance producer’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 Commissioner v. Malek, OAL Dkt. No. BKI 4520-05, Initial Decision (12/6/05), Final Decision

and Order No. E06-12 at 6-7 (1/18/06) (increasing fine recommended by ALJ from \$2,500 to \$20,000 even though producer argued an inability to pay fines in addition to restitution).

The third Kimmelman factor addresses the amount of profits obtained or likely to be obtained from the illegal activity. 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, supra, 108 N.J. at 138. First, it must be noted that the Respondents profited through their fraudulent and unlawful behavior. While the ALJ noted that Bigica concealed more than \$1.5 million in individual federal tax liability for the calendar years of 1999 through 2006, Bigica's conduct actually amounted to over \$2.1 million prior to Bigica's incarceration. See Information, attached to Department's February 2015 Brief as Exhibit B, at 5. As such, I MODIFY the Initial Decision to reference the correct amount of Bigica's individual federal tax liability. Additionally, Kimmelman does not limit consideration of this factor to actual profits. Thus, the Respondents' contention that Bigica is required to make restitution up to this amount is of no import. Kimmelman requires the consideration of not only actual profits, but the profits that the Respondents would have likely made if their acts in violation of the insurance laws of this State were successful. This factor weighs in favor of a significant monetary penalty.

The fourth Kimmelman factor addresses the injury to the public. Licensed producers act in a fiduciary capacity. In re Parkwood Co., supra, 98 N.J. Super. at 268. Moreover, 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. "When insurance producers breach their fiduciary duties and engage in fraudulent practices and unfair trade practices, the affected insurance consumers are financially harmed and the public's confidence in the insurance industry as a whole is eroded." Fonseca, supra. Here, Respondent Bigica failed to pay federal

income tax for an extended period and then, when discovered, he hid his assets by using bank accounts in the names of his businesses in order fund his personal expenses. He additionally used bank accounts in his spouse's name and a credit card issued in his employee and her husband's name, all in order to hide his assets and protect them from being seized in order to satisfy his back taxes. Further, he knowingly circumvented the Federal Election Campaign Act by conspiring with others to make payments to a federal candidate and then reimbursing them for their payments. Lastly, he failed to pay individual New Jersey State income tax and a judgment was obtained against him, which has not yet been satisfied. While the Respondents argue that Bigica's actions were "victimless," there remains a potential for harm to the public's image of insurance producers when licensed producers, such as the Respondents, commit acts of dishonesty, bad faith, theft, or fraud. Additionally, I agree with the ALJ's determination that "hidden campaign contributions have the potential to subvert public confidence in the elections process, and the disregard for valid tax obligations can damage public perception of fairness in the tax system." 05/27/15 PSD at 10. As such, I FIND that this factor weighs in favor of a significant monetary penalty.

The fifth Kimmelman factor to be examined is the duration of the illegal activity. I agree with the ALJ that the Respondents' fraudulent actions continued for a period of several years. Specifically, the ALJ noted that Bigica failed to file his individual federal income tax return from the years 1999 through 2006. However, Bigica also used bank accounts in the names of his businesses, including Bigica LLC, to hide his assets from 2005 to 2011, and engaged in the extensive use of a check-cashing business in Jersey City between July 2004 through September 2011 in order to obstruct and impede the IRS from collecting the back taxes owed. Bigica also participated in a scheme to violate the Federal Election Campaign Act from the years 2005



through 2009. As such, I MODIFY the Initial Decision to reference the extent of the Bigica's fraudulent behavior, which included the use of Bigica LLC, and FIND that these actions were not isolated to a single incident but were a series of fraudulent activities, lasting for a period of at least 13 years from 1999 through 2011. Such a long period of time shows a pattern of behavior and accordingly, weighs heavily in favor of a substantial monetary penalty.

The existence of criminal actions and whether a civil penalty may be unduly punitive if other sanctions have been imposed is the sixth factor. The Supreme Court held in Kimmelman that a lack of criminal punishment weighs in favor of a more significant civil penalty because the defendant cannot argue that he or she has already paid a price for his or her unlawful conduct. Kimmelman, supra, 108 N.J. at 139. Here, Bigica pleaded guilty to two federal offenses and was sentenced to 60 months in federal prison on December 11, 2012, ordered to make restitution in the amount of \$2,141,863, plus interest, and pay a fine of \$250,000. However, Bigica LLC was not separately the subject of any criminal action.

The last Kimmelman factor addresses whether the producer had previously violated the Producer Act and if past penalties have been insufficient to deter future violations. Here, as the ALJ noted, there has been no showing of any prior violations of the Producer Act by either Bigica or Bigica LLC.

The ALJ recommended that the following civil monetary penalties be imposed against the Respondents: Count One: \$5,000 each against Respondents Bigica and Bigica LLC, jointly and severally; and Count Two: \$10,000 against Respondent Bigica, individually. The ALJ also recommended that the Respondents pay costs of investigation. It is unclear from the Initial Decision whether the ALJ recommended a total amount of \$5,000 or \$10,000 (\$5,000 for each of the Respondents) for Count One of the OTSC. Additionally, the Department, in its February

2015 Brief requested the following civil monetary penalties be imposed: “. . . the total amount of \$15,000, joint and several consisting of \$5,000 in civil penalties for using an insurance agency as a conduit in tax fraud and \$10,000 for civil penalties for using an insurance agency as a conduit in election fraud.” See Department’s February 2015 Brief at 17. As this request relates to violations contained in Count One of the OTSC, there appears to be no civil monetary penalty requested by the Department for the violations contained in Count Two of the OTSC.

N.J.S.A. 17:22A-45c provides that “[a]ny person violating any provision of this act shall be liable to a penalty not exceeding \$5,000 for the first offense and not exceeding \$10,000 for each subsequent offense. . . .” Here, Count One of the OTSC alleges two<sup>13</sup> separate offenses committed by the Respondents: (1) Bigica failed to pay his federal taxes from 1999 through 2006 and Respondents fraudulently concealed Bigica’s income; and (2) the Respondents schemed to violate federal election laws through the use of straw donors and Bigica LLC bank accounts. Based upon the plain reading of N.J.S.A. 17:22A-45c, both of these offenses are separate, fineable offenses. See Merlin v. Maglaki, 126 N.J. 430 (1992) (finding that Maglaki’s submission of six falsified insurance claims constituted separate violations of the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-4a rather than one, total violation). Therefore, in light of the foregoing, and the above Kimmelman analysis and based on the severity of the violations I have concluded that Respondents committed, I MODIFY the recommendations of the ALJ and FIND that Respondents Bigica and Bigica LLC shall, jointly and severally, pay civil monetary penalties for Count One in the amount of \$15,000. This amount is allocated as

---

<sup>13</sup> Although Count One also alleges Bigica’s felony convictions as a violation, Bigica’s underlying conduct related to his felony convictions are already addressed in the other allegations contained in Count One of the OTSC. As such, civil monetary penalties will only be imposed as to the underlying conduct alleged, rather than for his criminal convictions. See Commission v. Tuite and Rapid Release Bail Bonds, OAL Dkt. No. BK1-663-14, Initial Decision (03/17/16), Final Decision and Order (06/16/16) (imposing civil monetary penalties as to the Respondents’ underlying conduct rather than on Respondent Tuite’s criminal conviction itself).

follows: \$5,000 for the violations relating to Bigica's failure to pay his federal taxes from 1999 through 2006 and Respondents' fraudulent concealment of Bigica's income; and \$10,000 relating to the Respondents' scheme to violate federal election laws through the use of straw donors and Bigica LLC bank accounts. Further, I ADOPT the ALJ's recommendation as it relates to Count Two of the OTSC and FIND that Respondent Bigica shall, individually, pay civil monetary penalties for Count Two in the amount of \$10,000.

The fines are fully warranted, not excessive or unduly punitive, and are necessary to demonstrate the appropriate level of opprobrium for the Respondents' fraudulent conduct.

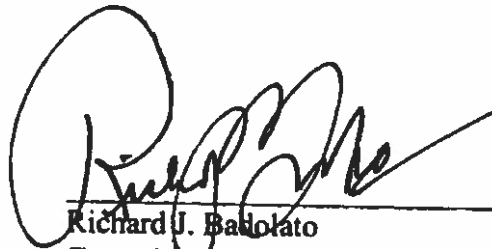
Pursuant to N.J.S.A. 17:22A-45c, it is appropriate to impose reimbursement of the costs of investigation. However, there is no documentary evidence in the record to set forth the amount of the costs of investigation and the Department did not specifically request costs of investigation in its motions for summary decision. As such, I REJECT the ALJ's recommendation and FIND against the imposition of costs of investigation in this instance.

### CONCLUSION

Having carefully reviewed the Initial Decision and the entire record herein, I hereby ADOPT the Findings and Conclusions as set forth in the Initial Decision. Specifically, I ADOPT the ALJ's conclusions, except as modified herein, and hold that the Respondents violated the Producer Act as charged in the OTSC, and have failed to present any legally or factually viable defenses to the violations of the Producer Act. Further, I ADOPT the conclusion that the Department's Motion for Summary Decision should be granted on both Counts One and Two as charged in the OTSC. As the Department dismissed Count Two of the OTSC as it relates to Bigica LLC's liability for Bigica's New Jersey income tax, I make no factual findings, determinations, or conclusions of law in this regard.

I also ADOPT the ALJ's recommendation and hereby ORDER the revocation of Respondents Bigica and Bigica LLC's insurance producer licenses. I MODIFY the ALJ's recommendations as to the civil monetary penalties to be imposed against the Respondents Bigica and Bigica LLC in relation to the violations alleged in Count One of the OTSC and impose the following: Count One (two distinct violations): \$15,000 against Respondents Bigica and Bigica LLC, jointly and severally. However, I ADOPT the ALJ's recommendation as to the civil monetary penalty to be imposed against Respondent Bigica for the violations alleged in Count Two of the OTSC and impose a \$10,000 fine against Respondent Bigica, individually. Lastly, I REJECT the ALJ's recommendation regarding costs of investigation and specifically FIND against the imposition of costs of investigation in this instance.

It is so ORDERED on this 22<sup>nd</sup> day of September, 2016.



Richard J. Badolato  
Commissioner

Inoord/Bigica and Bigica LLC Final Order av