JUSTIN ZIMMERMAN, ACTING COMMISSIONER, Petitioner/Appellee, v. ROBERT W. MANIA, HEIDI ANN MANIA, and RHM BENEFITS, INC., Respondents/Appellants.	SUPERIOR COURTOF NEW JERSEY APPELLATE DIVISION DOCKET NO: A-003346-23 OAL DKT. NO.: BKI 03589-22S AGENCY DOCKET NO. E22-30 Administrative Action ON APPEAL FROM: The DECISION AND ORDER of the Acting Commissioner of the Department of Insurance dated May 22,2024 Sat Below: Justin Zimmerman the Acting Commissioner of Insurance on April 8, 2024

APPELLANT ROBERT W. MANIA'S BRIEF

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PRELIMINARY STATEMMENT

The activities underlying Robert Mania's criminal charge were publicly filed in April 2016 and the facts underlying the Information occurred between September 2007 and June 2009. The Division of Insurance ("Division") refused to renew Robert Mania's license on October 8, 2017, six months after his conviction in April 2017. All fines, penalties, and monetary assessments assessed against Respondents have been paid.

This appeal relates only to Count II and Count III of the Order to Show Cause ("OTSC"), because the Acting Commissioner of the Division recognized that as to Counts I and IV there was no issue as to the alleged late notifications since the Division was made aware of Mr. Mania's case in April 2016 when it was first filed and again immediately after the conviction in April 2017. Counsel for Mr. Mania immediately after the filings attempted negotiations as to the regulatory penalties for the Manias with Eugene Shannon, the member of the Division responsible for his case. (254a; 404a-450a). Respondents appealed the decision of the Judge of the Office of Administrative Law ("OAL") to the Acting Commissioner of the Division which resulted in a reversal of various critical findings and rulings of the Judge as to Counts I, II and IV. (33a; 36a and 45a-46a). As to Robert Mania, only Counts II and III presently underly his license revocation. All fines and penalties for Robert Mania have been paid. Therefore,

only the revocation of his non-existent license by The Acting Commissioner is at issue in this appeal. (36a-38a).

The Division revoked Robert Mania's license for all practical purposes when it refused to renew his license on October 18, 2017. (473a). Mr. Mania had not continued in the insurance business since the charges were filed against him in April 2016. (37a-38a; 467a). He began serving his prison sentence in the early summer of 2017, and as the Acting Commissioner agreed there was no evidence that Mania remained in the insurance business after April 2016. (356a; 35-38a; 49a). The Acting Commissioner revoked his non-existent license on May 22, 2024 and extended the period that Robert could not work in the insurance business until May 22, 2029. (59a-60a and 53a). Thus, Robert Mania will have been out of the insurance business from April 29, 2016 until May 22, 2029, and without an insurance license since October 2017 when he was released from prison and his application to renew his license was formally rejected. (36a-38a;53a; 60a;473a).

No credit or any consideration was accorded Mr. Mania by The Acting Commissioner for Mania already having been deprived of his insurance license by the Division 's refusal to renew it on October 8, 2017 or his being unable to use his license since April 2016. (467a; 37-38a). While the Acting Commissioner was only permitted by law to impose a five-year revocation, the

delay by the Division filing the OTSC in July 2004 has now deprived Mr. Mania of a license for more than eleven and a half (11 ½) years; from October 18, 2017, when his renewal was denied until May 22, 2029 (37a-39a).

PROCEDURAL HISTORY

On April 21, 2016, a federal criminal Information was filed charging Rober Mania with mail fraud for conduct that occurred between September 2007 and June 2009.

On April 26, 2017, Robert Mania pled guilty to the Information charging a violation of the law ending in June of 2009. The Manias' counsel attempted to negotiate the regulatory penalties facing the Manias immediately after the conviction starting in May 2016. (533a; 536a-574a; 409a-427a).

On May 10, 2017, the New Jersey Attorney General's Office filed an action to bar Robert Mania from any future public office and for monetary relief based on the conduct between 2007 and June 2009 as outlined in the federal criminal Information filed in April 2016 (91a, et seq.).

On October 18, 2017, the Division made the decision to deny Robert Mania's application to renew his insurance license. (406a).

In 2016 and 2017, counsel for the Manias attempted to negotiate the issue of penalties and suspensions and regulate consequences for his criminal charges.

Not until April 7, 2022, did the Division file an Order to Show Cause to revoke the licenses of Heidi and Robert Mania and their company RHM Inc. based primarily on Robert Mania's federal charges filed in April 2016 and his conviction in April 2017. (Contract 106a et seq. and 91a et seq.).

On January 8, 2024, the Administrative Law Judge rendered a summary judgement decision awarding penalties, investigative costs and a six-month suspension for Heidi Mania and as to Robert Mania, revocation of his non-existent license and penalties and costs. (2a et seq). On May 22,2024 the Acting Commissioner of the Division filed an Opinion addressing both the Notices of Exceptions filed by both parties in January 2024 to the Opinion of the OAL Judge (15a), and the case. On July 8, 2024, the Notice of Appeal was filed.

Robert Mania agreed to plead guilty to a federal offense of fraud that related to his insurance business in 2012. He immediately began to cooperate with the federal authorities and with the FBI to cooperate in an investigate of the insurance industry in New Jersey. (173a et seq.). Robert also tried to make amends by cooperating for five years and making contacts and tapes of meetings requested by the FBI agents supervising him. The demands by the FBI were so intense it was like a full-time job for Mr. Mania. (468a-469a). The criminal investigations of corruption in the world of New Jersey insurance, included investigation of those regulating it and corruption by various public officials.

Mr. Mania cooperated covertly right up to April 2016 when the charges against him were publicly filed.

This appeal is primarily about the lapse of time between the underlying conduct which occurred from 2007 to 2009 (16 to 18 years ago) and the order penalizing Mr. Mania in May 2024, 17 years after the conduct and 8 years after the Division had full knowledge of all pertinent facts in early April of 2016. The delay in filing the OTSC until April 7, 2022, when the OTSC was first filed to punish Mr. Mania a second time for his transgressions even though he had been incredibly financially harmed for an offense that caused minimal gain or harm when he was sentenced. The Division prevented him from earning a living in the insurance field by refusing to allow him to renew his license on October 18, 2017. (2a, 26a) Thus the decision of the Acting Commissioner of the Division to increase the time Mania was debarred from the industry from May 22, 2024, continuous until May 22, 2029. (53a) was arbitrary and capricious. The revocation was imposed despite the Division's decision to deny his license renewal in October of 2017.

Robert Mania began cooperating with the FBI to root out public corruption and crime in the insurance industry from 2012 through 2016. Thus, Mr. Mania has been effectively prevented from working in the insurance industry for 13 years from April 2016 until May 22, 2029. (467a) Moreover, Robert Mania has

been formally denied a license by the Division from October 18, 2017 until May 22, 2029, a period of 11 ½ years (406a) This extended period was due to the delay the Division took to file the OTSC in this case until April 7, 2022 (2a) which was a full 6 years after Robert's offense was made known to the Division in April of 2016. At that time counsel for Mania raised with the Division the issue of the revocation or suspension and tried to negotiate a resolution to the inevitable administrative action against him (E.g. 254a; 409a-450a)

The Statute of limitations, the equitable doctrine of laches, the *Kimmelman* doctrine stemming from *Kimmelman v. Henkle and McCoy*, 108 N.J. 123 (1987), the Entire Controversy Doctrine, and the Rehabilitated Offenders Act ("ROA") should each, on separate and independent grounds require reversal and vacation of the Order of Revocation for 5 years beginning May 22, 2024.

It is only Counts II and III of the OTSC filed by the Division against Robert Mania that are an issue herein. Count III of the OTSC identifies conduct which took place in the fall of 2007 through June of 2009 as requiring revocation. Count II of the OTSC charged that Mania was convicted in April 2017 but continued to participate in the insurance industry (73a); The Acting Commissioner's final ruling on Count II significantly modified the Count II

violation ground found by the OAL Judge. (36a-38a). While Count III is based on the conduct underlying the criminal conviction, Count II differs from Count III in that it is based on the Conviction itself in April 2017 and Robert Mania's failure to get an exception from the Commissioner to allow Mania to continue to work in the insurance business after the conviction, which charge was largely rejected and/or modified by the Acting Director who held that it was unnecessary to get a waiver if the licensee ceased practicing in the insurance industry as Mr. Mania did. (36a-38a). The final decision of the Acting Commissioner as to these issues and the extended debarment are found at 26a-30a, 33a-41a, and 50a-53a.

The already generous ten-year statute of limitations should not be extended if there was time to bring the OTSC before the statute of limitations expired. **(Point 1)** From 2016 through 2017 counsel for Mr. Mania requested to address and settle possible regulatory penalties with the Division (E.g. 353a et seq.). The Division first learned and was notified of Mr. Mania's criminal conduct in April 2016. The ten-year statute of limitations expired as to the underlying conduct in June 2019, which was a three-year period, where the OTSC herein could have been filed but was not. The factually identical OTSC by others in the New Jersey Attorney General's office seeking other penalties and forfeitures was filed in May 2017. The OTSC should also be barred by

laches because Robert Mania has been severely prejudiced by the Division 's delay by suffering a deprivation of his license for 11 ½ years and not the 5 years permitted by law. **(Point 2)** *Kimmelman v. Henkles and McCoy*, 108 N.J. 123 (1987) which stems from the constitutional principles of double jeopardy and excessive fines and punishments should also bar this revocation. If applied herein the *Kimmelman* doctrine should bar the additional five-year revocation of Mr. Mania's nonexistent license which will then make his punishment to be 11½ years from October 18, 2017, until May 22, 2029. The Acting Commissioner only considered the *Kimmelman* doctrine as it applied to monetary fines and penalties and not to the far more severe and devastating aspect of revocation which denies Mr. Mania the ability to pursue gainful employment and earn a living in the licensee's area of expertise. **(Point 3)**. The entire controversy doctrine also bars Counts II and III of the OTSC (**Point 4)**, The Rehabilitated Offenders Act ("ROA") required at least an evidentiary hearing as has been given others facing revocation or attempting a renewal. If not, the record herein justifies summary judgment in Mr. Mania's favor on the ROA because no factual opposition was filed. **(Point 5).** All affirmative defenses warrant summary judgment in defendant's favor because no facts were offered to justify the passage of time and deadlines or in evaluating the *Kimelman* doctrine as it applies to the additional repetitive revocation of his

license that more than doubles the time of the first denial of a Robert Mania's license on October 18, 2017.

STATEMENT OF FACTS

Robert Mania was an insurance licensee starting in 2003 (116a) when he worked for Bank of America Insurance Corporation ("BAIC") while being supervised by Frank Cotroneo (470a). Robert Mania was a good citizen of Mount Olive Township all his life serving the public in non-paying public-spirited activities as an assistant wrestling coach and as a volunteer, unpaid member of the Mt. Olive Board of Education ("MOBE") (584a-585a).

His supervisor at BAIC, Frank Cotroneo, diverted commissions owed to Robert Mania in the years leading up to 2007. Eventually Robert Mania complained to both Cotroneo and to Cotroneo's supervisor (470a). The result was that Cotroneo threatened Robert Mania and his family but told Mania he would be fired if Mania ever went to Cotroneo's supervisor to complain about Cotroneo again. Cotroneo offered to make up the over $250,000 owed to Mania by paying it back from Cotroneo's future commissions. If Mania left BAIC and formed his own agency Cotroneo offered to pay back the money owed by sharing some future commissions with Robert Mania and his new agency (470a). Robert Mania left BAIC and formed RHM, Inc. Cotroneo started to make those repayments starting in 2007 from an account where BAIC received commission

payments from accounts where Cotroneo was Broker of Record including Mount Olive Board of Education. (MOBE)

While Robert Mania recused himself from all discussion and voting on insurance matters before the MOBE, explaining he had a conflict-of-interest, (597a-598a), Frank Cotroneo, the Broker of Record was repaying him in connection with that account and others. Cotroneo increased the commissions charged on the MOBE's insurance policies by 1% to make it easier for him to repay Robert Mania and to share money with others chosen by Cotroneo by directing Mania and RHM, Inc. to pay some of the proceeds to others as well (14a, 470a). The premiums was paid by the insurance company CIGNA and not by the public MOBE (87a). The public entity was not a financial victim in any way. Board members commended Robert Mania for his work and for saving them money (597a-98a). Moreover, CIGNA was aware of the increased premiums they were charged and showed it on notices sent to Mania for the MOBE. Nowhere did the OAL Judge or the Acting Commissioner of Insurance consider or mention that the financial payments to Mania were the repayment of a debt. The Department never contested those facts below. (470a)

Frank Cotroneo's and Frank Gartlan's many crimes throughout the State of New Jersey became significant public embarrassment revealing frauds in connection with the insurance sold to many public entities including public

entities in Toms River (its Board of Education and other public Boards) and public entities in Perth Amboy (including its Board of Education and others). Cotroneo was eventually convicted, and his insurance license was revoked for 5 years. (**Point VI**). The extent of Cotroneo's and Gartlan's crimes and the many public figures implicated make Robert Mania's tangential involvement in Cotroneo's machinations to permit Cotroneo to repay a debt insignificant by comparison. **(Point VI).**

The Commission's regulations did not require disclosure of those brokers participating in commissions and the percentages or amounts of their commissions received. Instead, such an insurance regulation was proposed in 2008 and 2009 but rejected and never became law. (18a, fn. 5) While Mania took steps to conceal the participants in the commissions from the fall of 2007 until July of 2009 that was not even a regulatory violation because of the conscious decision of the Division to reject the regulation. (18a, fn. 5).

POINT I

THE STATUTE OF LIMITATIONS BARS COUNT III OF THE OTSC (Raised Below at E.g.19a;7a-8a;80a-82a)

The Division failed to institute any charge against Robert or Heidi Mania until three years after 2019, which was 10 years after the latest date of the fraud scheme as identified by the Division in Count III. More importantly, the filing

was six years after the Division definitively found out about the basis for their Complaint when Robert Mania's criminal Information was publicly filed and reported in the press in April 2016 and when counsel and the Division first corresponded about settling regulatory penalties. (E.g. 409a to 456a; 487a to 574a). On April 25, 2017, Robert Mania was convicted, and a formal notification was sent to the Division by counsel for Mr. Mania. In April 2017, the New Jersey Attorney General's Office filed an OTSC against Mr. Mania based on his conviction to remove his pension and bar him from public office among other relief. If that branch of the State Government could file for relief, why could not the Division and its counsel who were members of the Attorney General's Office? On October 18, 2017, the Division denied Robert Mania the right to renew his license based on their knowledge of the criminal Information in April 2016 and his conviction and sentencing in April 2017.

The Division has of yet cited no case where an extension of the generous ten-year statute of limitations was granted to the State. More importantly, when the party needing the extension has adequate time to file their cause of action, after discovering it, they are required to file the action within the applicable statute of limitations. In *Burd v. New Jersey Telephone Company*, 76 N. J. 284, 291-92 (1978) cited and relied upon by the Division, the Supreme Court held:

> There is no suggestion in any of the leading cases in this area that accrual of the cause of action is… postponed until plaintiff learns

> or should learn the state of the law positing a right of recovery upon the facts already known to or reasonably knowable by the plaintiff.

Judge Clifford's concurring opinion in *Burd* clarified the doctrine applicable to the facts of this case:

> As pointed out by Judge Conford, *ante* at (287-288), the accident in question occurred on September 7, 1971, and plaintiff concedes that his counsel was aware of the relationship between the offending glue and his heart attack on October 7, 1972. ***There remained eleven months during which suit could have been filed before the expiration of two years from the accident date, more than ample time for the expeditious filing of a complaint.*** Plaintiff having failed to institute suit in that time, I would hold his claim barred by the statute of limitations even if we were to accept his version of when the aforementioned causal connection was discovered.
>
> Id. at 294 (emphasis added).

The Supreme Court's decision in *Burd* affirmed the conclusion of the Appellate Division in *Burd v. New Jersey Telephone Company*, 149 N.J. Super 20 (App Div. 1977), which had held in pertinent part:

> Our courts have identified the accrual of a cause of action for purposes of the statute of limitations as the……However, in order to avoid injustice the courts have developed an exception to this rule which permits a party in an appropriate case to avoid the bar of the statute of limitations where the facts supporting the cause of action were not discoverable in the exercise of due care ***until it was too late to file suit within time.***
>
> Id. at 30 (emphasis added) (internal citation omitted).

If there was any doubt as to the application of the limitation doctrine to cases where the statute expired before discovery of the basis for the suit it was settled later in the same Supreme Court opinion: **"Extending the discovery rule to cases of this type where the circumstances permit the suggestion that plaintiff may have knowingly slept on his rights would place primary importance on the credibility of the plaintiff."** *Burd, supra*, 76 N. J. at 34.

Thus, both our Supreme Court and the Appellate Division in *Burd* held that the extension doctrine for late discovery did not apply when the Plaintiff had adequate time to file their complaint after their right to do so was discovered. Eleven months in *Burd* was plenty of time to file while three years herein was more than enough as evidenced by the Attorney General's eventual filing based on the same facts from five years earlier. (91a). In *Burd*, the extension needed was only a matter of months and that minor extension was rejected. In this case, the extension needed would be approximately 3+ years for Count III of the OTSC. The Division discovered the details of the filed criminal Information in April 2016 and in April 2017 when Mania was charged and then convicted. (119a-120a at ¶¶ 20, 21 and 23). (*See* 533a-574a; 428a to 445a; 487a, et seq.). When Robert Mania pled guilty, his counsel sent a copy of the Judgement of Conviction to the Division. (553a-574a). In *Burd*, the plaintiff sought an 11-month extension which was rejected while here the Division sat on their rights

after discovering the events giving rise to the cause of action in April 2016 until the OTSC was finally filed in April 2022 – six years later. As the Court held in *Burd*, the extension doctrine does not apply in a case such as the present matter where the filing party had three years until the expiration of the statute of limitations.

The Court below and the Assistant Commissioner simply presumed that they were entitled to an extension because they claim they did not know of Mania's conduct from 2007-2009 until 2016. *Presslaf v. Bernard Robins et al.*, 168 N.J. Super 543, 546-547 (App. Div. 1979) cited by the Division below is not helpful to the Division . *Presslaf* denied the applicability of an extension based on the discovery rule as a matter of law and listed various categories of cases where the applicable statute of limitations was mandatory. That court stated the extension doctrine based on a late discovery was inapplicable to libel cases, Workman's Compensation cases, and to another ten-year statute of limitations pursuant to NJSA 14:1-1. *Presslaf* emphasized that the discovery extension of a statute of limitations is rarely granted. Id. at 546-47.

Evernham v. Selected Risk Insurance, 168 N.J. Super 132, 136-37 (App. Div. 1978) cited and relied on by the Division below, is yet another case where the extension for late discovery was denied. The Appellate Division denied the claims for an extension of the statute of limitation stating:

> The general rule in the cases applying the doctrine of equitable estoppel of a defendant to plead a statute of limitations is that **if a reasonable time remains to meet the statute after cessation of any basis for continued reliance by the plaintiff on the conduct of the defendant the action will be barred if not filed in time.** There is even a strongly held view that the reasonable time qualification should obtain in relation to the discovery rule.
>
> Clearly, plaintiff had a reasonable time to institute this action before expiration of the limitation period after announcement of the Harlan decision.
>
> Id. at 136-37 (emphasis added) (internal references omitted).

In *Evernham*, the extension or estoppel period urged by the plaintiff was only 8 months, not the three years after discovery that is sought in this case to justify the filing of the OTSC in April of 2022, 6 years after discovery in April 2016. *See also Gabelli v. SEC*, 568 U.S.442 (2013) where the United States Supreme court decided as the same as the New Jersey Supreme Court did in *Burd.* All other cases cited by the Division occurred before *Burd* was decided and therefore any helpfulness to the Division's position was implicitly overruled by *Burd* when the New Jersey Supreme Court held that if the plaintiff had time after discovering the cause of action to file it (in this case 3 years) than the action is barred if filed outside the statute of limitations. Thus, Count III is barred by the statute of limitations.

POINT II

LACHES SHOULD BAR BOTH COUNTS II AND III
(Raised below at E.g. 43a-44a)

The Division argues that the laches is an equitable doctrine and not applicable to this case. Yet, this is an OTSC to revoke a license which is an equitable remedy. Also, their argument is that it would be inequitable to enforce the statute of limitations. Laches is an equitable limitation on an equitable remedy. An Order to show cause is usually denominated an equitable action and therefore equitable defenses like laches should apply.

While the Division argues that equity should be invoked to extend the statute of limitations over three plus years, they provide no factual support other than they did not know in the beginning. The New Jersey Supreme Court stated in *Lavin v. Bd. of Ed. of Hackensack*, 90 N.J. 145, 152 n. 1 (1982):

> Because laches is an equitable principle aimed to promote justice, conditions or circumstances may make it inequitable to prosecute a claim after a period shorter than that fixed by the statute of limitations. ***Thus, where there has been an unreasonable delay, laches has been applied to defeat a claim despite the fact that the time fixed by the analogous statute of limitations has not passed.*** Even if the cause of action in this case were deemed to be similar to a claim for breach of contract, it would be appropriate to consider the applicability of laches. (emphasis added).

In *Fox v. Millman*, 201 N. J. 401, 422 (2012) the Supreme Court again reiterated that doctrine as well stating that laches may operate to "…shorten an

otherwise applicable statute of limitations …" The Division argues that the mere passage of time without prejudice does not give rise to laches; essentially claiming that the years of delay from discovery of the cause of action is not long enough because Robert Mania and Heidi Mania were not prejudiced by delay. Nothing could be further from the truth. The Division denied Robert's license to work in the world of insurance, which was the way he was trained and educated for years and the way he earned a living for many years. The denial of his license in October 2017 based on these same facts as this case is an unconscionable delay that has extended his time of revocation and suspension for 5+ years as permitted by law to 11 and ½ years. To this day, he has not been able to return to his chosen profession, which was his chosen profession, and which provided him with a good living. It was far better than working in truck sales where he has worked since getting out of prison in October 2017. That is significant prejudice to Mr. Mania. It was a loss of substantial income for many years because of the Division 's delay and other actions. Moreover, the evidence that was available before is now stale or gone. (E.g. 583a).This is an appropriate case for laches to be applied because of the prejudice to Robert Mania by the Division's long inexplicable delay after delay the State filed the companion action against Robert Mania to deny him a pension and bar him from public office among other remedies which was based on the identical facts set forth in

the OTSC herein should not be permitted and the entire Division action should be dismissed on the basis of laches.

In *Chance v. McCann*, 504 N.J. Super 547, 559 (App. Div. 2009)[1], the Court held:

> Consequently, we hold that this is the rare case in which an equitable defense of laches should be considered, despite the fact that the case was timely filed under the applicable statute of limitations. Chance had four years within which to bring suit against McCann for failing to make the monthly payments called for by the partnership agreement. There appears to be no explanation in the record for his failure to do so, other than McCann's testimony that Chance conceded that he had reached the agreement himself and agreed to seek no further payments. (Emphasis added).

Laches should apply to bar both Counts II and III or the OTSC.

POINT III

THE ENTIRE CONTROVERSEY DOCTRINE SHOULD BAR COUNTS II AND III Of THE OTSC (Raised below at E.g., 23a-25a)

The State argues that the entire controversy doctrine is simply inapplicable to the two separate OTSC's brought by the State against Robert Mania even though they both arise from the same identical set of facts and the same parties, the State and Robert Mania are involved. (Compare 91a et seq. with 106a et seq.) That is not what the Supreme Court held in *Hackensack v. Winner,* 82 N.J. 1 (1980). In *Winner*, which involved a related suit before two

[1] Chance was cited with approval in *Fox v. Millman*, *supra*, at 343 and 344-45.

administrative agencies of the State, the Court held that the entire controversy (or single) doctrine controversy is applicable to both administrative decisions and forums.

> Hence it is consistent with this constitutional philosophy to apply to administrative agencies, in appropriate situations, judicial rules conducive to the ends of intergovernmental compatibility and harmony, such as *res judicata,* collateral estoppel***, the single-controversy doctrine and the like.*** Decisions have stressed that the policy considerations which support these judicial doctrines — namely, finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness — have an important place in the administrative field.
>
> Id. at 32-33 (emphasis added).

Moreover, it is necessary for the involved forums to exercise their jurisdiction so that there is not duplication or needless litigation:

> The outcome in the instant case under all circumstances would require PERC to accord binding effect to the determination of the Civil Service Commission that anti-union bias was not a substantial factor in the decision of the appointing authority to deny promotions to the petitioners. The Appellate Division saw fit to set aside PERC's subsequent determination on the ground that that agency was bound to follow the earlier determination by the Civil Service Commission under principles of collateral estoppel, or "issue preclusion," ***as well as under the single controversy doctrine.*** …
> Id. at 38 (emphasis added).

In *Thornton v. Potamkin Chevrolet,* 94 N.J. 1 (1983) the Court was faced with a preexisting arbitration under a union agreement with the defendant as to the plaintiff's rights under the union agreement. That private contractual

arbitration was not in a state judicial or state administrative forum. The Supreme Court in *Thornton* pointed out that the inability to control a private arbitration in a separate jurisdiction did not trigger the entire controversy doctrine. Therefore, the entire controversy doctrine did not bar the Civil Rights Division of the Attorney General's Office from considering Thornton's later civil rights complaint. The lower courts had ruled that the entire controversy doctrine did apply to a prior arbitration decision and therefore barred the Division of Civil Rights, an arm of the State like the Division from bringing a case. In this case, the New Jersey Office of Administrative Law and the New Jersey Superior Court should not preclude the application of the entire controversy doctrine; they are both arms of the New Jersey judicial system. The prevention of "needless litigation, avoidance of duplication and the preservation of judicial economy" is met by such application. While the application of the entire controversy doctrine should not apply to private contractual arbitrations, or private theological courts, it should apply to State Forums in the same judicial system. The proceeding filed against Mr. Mania in Superior Court by the Attorney General's Office to punish him based on the facts set forth in his federal criminal case are the exact same facts as utilized herein. Therefore, both are proper proceedings upon which to premise the application of entire controversy doctrine. This second identically

based OTSC proceeding filed five years after the first OTSC was filed by the State in Superior Court. (Compare the OTSC's at 91a and 106a et. seq.).

POINT IV

THE KIMMELMAN DOCTRINE WARRANTS JUDGEMENT FOR ROBERT MANIA AND A REVERSAL OF THE REVOCATION ORDER (Raised below at E.g., 54a-58a;25a-28A)

In *Kimmelman v. Henkles and* McCoy, 108 N. J.123 (1987) our Supreme Court set forth factors that must be evaluated to see if the penalties of suspensions and revocations sought by Division are appropriate considering the prior prosecution of Mr. Mania and the action by the Division denying the renewal of his license. Mr. Mania was prosecuted, convicted, and sentenced based on the same facts set forth by the Division. He paid $403,000 in forfeitures and restitution and $3,000 more in fines and was imprisoned for three months which caused him to be unable to practice his profession and earn a living with his insurance license from April 2016 forward (256a;467a-468a). The Division of Insurance made the practical suspension more permanent by denying him the right to even apply for a renewal of his license on October 18, 2017.

To determine if additional penalties and fines and revocations by the Division were appropriate, the Supreme court in *Kimmelman* set forth seven factors for the Division of Insurance to consider:

> (1) The good or bad faith of defendant; (2) Defendant's ability to pay; (3) Amount of profits obtained from illegal activity; (4) Injury

> to the public; (5) Duration of the conspiracy; (6) Existence of criminal or treble damages actions; and (7) Past violations.
>
> Id. at 137-140.

In this case there was no injury to the public by Manis' acts. The MOBE was not a financial victim because they were not charged any of the increased commission. The OAL Judge suggested that perhaps Cigna was a financial victim because they paid the 1% increase in commission, but Cigna had agreed to it. Cigna sent notifications of the increased commission out. (87a). Moreover, as the ALJ found, the injury to the public was "minimal" (87a) and the payments by Robert Mania were extreme causing a loss to him of over $600,000 including tax penalties that caused him to enter a repayment schedule with the state taxing authorities. (581a-586a;471a;87a). Robert Mania was admittedly harmed because he had to liquidate his 401K which caused him to incur a tax penalty (471a) and the Manias had to sell their home and Robert became a mechanic to help repay all that was required to satisfy the criminal judgement. (583a).

These facts impact all *Kimmelman* factors in different ways. Mania's good faith was shown by his efforts to cooperate immediately with the federal investigation and agreement to make such large civil payments and penalties and forfeitures. His participation in Cotroneo's scheme was primarily motivated by his desire to be repaid the commissions he had lost to Cotroneo by virtue of

another aspect of Cotroneo's fraud which detracts from arguments of bad faith and criminal intent.

Mania's efforts to repay show that he did all he could financially and that he exhausted his financial capacity to do so, (factor 2). As to factor 3, Mania made little and had to pay hugely to make amends as the OAL Judge found. (87a). The Manias sold their home and Robert Mania began work as a mechanic and liquidated all his IRAs and suffered large tax penalties to raise the money to pay fines, penalties, restitution and /or forfeitures. (583a;471a). As to factor 4, the OAL Judge and the Acting Commissioner commented upon the lack of financial harm to the public from Mania's acts. (E.g. 87a). Factor 5 - the offense lasted for the period from September 2007 to June 2009 but the length of the offense is significantly ameliorated by the lack of profit to Mania and the loss agreed to by him to make amends and his incredible efforts and steps taken to repay. (583a; 47a). As to factor 6 not only were there criminal actions available they were pursued and he received an excessive penalization monetarily and served a prison term which clearly weighs in his favor. As to factor 7, there was one prior minor regulatory infraction of failing to adequately supervise an employee. (30a)

The Appellate Division and the Commissioner, in other cases, have specifically endorsed the application of the *Kimmelman* doctrine to either bar a

second round of regulatory punishments or to minimize it. *See In Re Division of Banking and Insurance v. Shehata***,** Dkt. No. A-0119-19T3 (2020). (625a). In a per curiam opinion, the Appellate Division vacated a monetary penalty and held that it was arbitrary for the Commissioner to fail to consider factors of *Kimmelman* and remanded the case for further proceedings. In proceedings after *Shehata*, the Commissioner analyzed other cases where the Division was seeking to penalize the respondent and voluntarily utilized the factors set forth in the *Kimmelman* Doctrine. See *Commissioner v. 21st Auto Group*, Dkt. No. 19-020061. (630a). The revocation of a license that entitles a respondent to earn a living is a serious penalty and our New Jersey courts have agonized over the years the circumstances that justify such a revocation. As to analogous issues raised by medical license revocations actions, *In re the Suspension or Revocation of the License Issued to Zahl,* 186 N.J 341 (2006) is instructive. Our Supreme Court overturned the reversal and vacation of a revocation of a medical license by the Appellate Division which ruled it was too harsh an additional penalty under the circumstances. The Supreme Court reversed, but in words that could be applied to the same revocation issues for insurance licenses, stated:

> The Medical Practices Act (MPA) vests the Board with broad authority to regulate the practice of medicine in the State of New Jersey. *N.J.S.A.* 45:9-1 to 27. The Board has the power to promulgate rules and regulations to protect patients and licensees. *N.J.S.A.* 45:9-2. The Board's supervision of the medical field is critical to the State's fulfillment of its "paramount obligation

> to protect the general health of the public." Under the MPA, a physician's licensure is contingent upon a physician maintaining good moral character. *N.J.S.A.* 45:9-6 (requiring that applicant for medical license make showing of good moral character).
>
> *The Uniform Enforcement Act (UEA), N.J.S.A. 45:1-14 to -27, was enacted to create uniform standards for "license revocation, suspension and other disciplinary proceedings" by professional and occupational licensing boards, N.J.S.A. 45:1-14.* The UEA, which works in tandem with the MPA, also grants the Board disciplinary powers over medical licensees. Those powers include the right to suspend or revoke the medical license of a physician on proof that the physician committed certain acts of misconduct. *N.J.S.A.* 45:1-21. For example, the Board may revoke a physician's license if the physician
> b. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense.
>
> Id. at 444-45 (internal citations omitted).

Robert Mania was severely punished by his sentence in April 2017 which included a total of $406,000 in fines and other forfeitures and payments when he had caused no losses to any victims. Mania's nonexistent license was for all practical purposes revoked and/or suspended when the Insurance Commission denied his right to even submit a renewal for his license. A practical debarment, suspension or revocation was imposed upon Mania on October 18, 2017, when he was denied the right to even apply for the renewal of his insurance license. From that moment he could not earn a living in insurance up to and past the filing of the formal OTSC to revoke his non-existent license, filed in May of 2022, and which continued right up to the revocation in May 2024 where the

Acting Commissioner of the Division then imposed a further debarment of 5 years until May 22, 2029. Not only should that practical bar from earning a living in the insurance industry from April 18, 2016 to May 22, 2024 (over 8 years) have weighed heavily in Mr. Mania's favor in the context of the *Kimmelman* analysis, but the principles of uniformity espoused in the Uniform Enforcement Act, *N.J.S.A.* 45:1 et seq., should also be considered. Imposing a further and addition debarment from the industry was arbitrary and capricious

The technical nature of Robert Mania's participation in a small branch of Cotroneo's schemes where Mania followed Cotroneo's dictates as to how Cotroneo would repay Mania what Cotroneo owed him should be balanced in Mania's favor. As the Broker of record for the MBOE, Cotroneo made and recommended decisions on insurance and commissions to the MBOE. While Mania interfered with the Cigna notification of the identity of the insurance Producer's participating in commissions on the MBOE policies, that was not even a regulatory violation in and of itself. (fn. 5 at 18a). The federal government investigated with Mania for five years as a cooperating witness gaining intimate knowledge of Mania's prior business yet, the sole evidence of Mania's knowing involvement in Cotroneo's scheme cited by the federal government at sentencing was Mania's misdirection of the notices that would have revealed some of Cotroneo's convoluted and tangled diversions of money to multiple entities.

Mania's receipt of some of the commissions lawfully paid to Cotroneo's firm as broker of record was also not in and of itself illegal. There was no claim in that sentencing memo by the Prosecutors who pursued Mr. Mania and worked with him for over five years as a cooperating witness that the Commissions were fraudulently "inflated." Instead, it was agreed that Cotroneo raised the Commissions 1%, and that Cigna knew and agreed to pay them and sent notices evidencing their knowledge and consent. No evidence of fraudulent inflation was produced against Robert Mania at any time.

New Jersey's statutes in and around 2008-2009, permitted the Division to create regulations to require disclosures of commissions to insureds. The regulation to require disclosures proposed in mid-2008 was to take effect in 2009 but the Insurance Commission rejected and did not enact them. Those proposed regulations never took effect. (18a; fn5). The Department chose not to adopt those regulations but now Mania's role in not delivering such notifications remains overemphasized by the Acting Commissioner.

Since Robert Mania had recused himself from all consideration of Insurance issues and votes by the MBOE on any insurance or health plans, he did not vote or participate on insurance matters before the MBOE. (597a-98a). Recusal should have protected Robert from criminal prosecution. Present counsel became involved in Mr. Mania's criminal case only after the agreements

and negotiations as to the plea and amounts that would be ordered to be paid and the nature of the charges were settled between the Government and Mr. Mania's prior criminal counsel. (467a; 471a-472a).

POINT V

THE REHABILITATED OFFENDERS ACT WARRANTS AT LEAST A REMAND FOR TRIAL IF NOT SUMMARY JUDGMENT FOR ROBERT MANIA BECAUSE THE DIVISION PROVIDED NO EVIDENCE TO REBUT THE EVIDENCE OF MANIA'S REHABILITATION (Raised below at E. g. 49a-53a)

The Acting Commissioner has agreed the ROA applied to this OTSC action to revoke Mania's licenses. (50a et. seq.). In *Scafuro v. New Jersey Department of Insurance*, 92 N.J.A.R. 2d (INS) 67, 1992 WL 277364 (1992), Scafuro had a timely license revocation proceeding and sought thereafter to gain a restoration of his license based on the ROA. The trial related to the issues under the ROA and its legislative findings which provide:

> …it is in the public interest to assist the rehabilitation of convicted offenders by removing impediments and restrictions upon their ability to obtain employment …based solely on the existence of a criminal record.
>
> Id. at 4.

The revocation proceeding in *Scafuro* had already occurred. Id. at 1-2. Thereafter, in June of 1991 Scafuro applied for a license renewal and was denied after he appealed. In Mania's case, the revocation and penalty actions were instituted roughly five years after the renewal was denied in 2017. Mania was

already kept out of the insurance industry for over five years before the OTSC herein was finally filed. Therefore, he had ample time to become rehabilitated. Therefore, the issues should be addressed but in a different way than the Acting Commissioner and OAL Judge did.

The *Scafuro* court listed the factors the agency and this Court should weigh under the ROA including: (1) the nature and duties of the profession; (2) the nature and seriousness of the crime; (3) circumstances under which the crime was committed; (4) the date of the crime; (5) age of the person when he committed the crime; (6) whether the crime was an isolated or repeated incident; and (7) social conditions which may have contributed to the crime.

Robert and Heidi Manias' certifications (467a et. seq. 575a -579a et. seq.) recite important facts relating to the ROA and Courts II and III of the OTSC. This offense occurred 15 - 17 years ago from roughly September 2007 to June 2009. Robert Mania was 37 years old at the time and was suffering from an alcohol problem which he cured and recovered from in 2017. (583a-584a). Therefore, factors 4 and 5 heavily favor Robert Mania because the offense was so long ago and he has taken many steps to rehabilitate his life since his conviction. (582a-585a).

Factors 6 and 7, the circumstances under which the crime was committed and the social conditions which contributed to the crime also heavily favor

Robert Mania. This was an offense engineered by Robert Mania's prior boss Frank Cotroneo who had supervised, trained and cheated Robert Mania out of commissions due to Mania from BAIC thereby diverting money to himself while both were at BAIC. (470a). Robert mentioned the diversion to Cotroneo's supervisor while Cotroneo was on vacation. (470a). The result was a threat from Cotroneo when he returned from vacation that Robert was endangering his career and his family's welfare. (470a). Cotroneo, however, told Robert that he would repay the diverted commissions from Cotroneo's future commissions and earnings if Robert remained quiet. Robert would need to leave BAIC and establish his own firm to get what was owed to him. (470a). Thus, factors 2, 3 and 7 also heavily favor Robert because he was coerced into a minor role of the complicity by Cotroneo, if he was to be repaid what he was owed. These uncontested factors went totally unmentioned and unconsidered in either the OAL decision or the decision of the Acting Commissioner. Cotroneo's license was only revoked for five years. Mania's license has been denied to him for 12 years to date by the Acting Commissioner's Order.

This case was prosecuted as a federal felony and because of that label, it is defined as a serious offense. Robert Mania's role in the offense was, however, far from significant. Robert Mania's act identified repeatedly by the Acting Commissioner as evidence of intentional complicity was that Robert Mania

diverted Cigna's notice that listed the recipients and the amount of their commissions to his own mailbox. No insurance regulation required that disclosure and the Insurance Commission itself rejected requiring such disclosures by rejecting the proposed regulation. (fn 5 at 18a).

Mania's role on the non-disclosure was motivated by Cotroneo's demand, who did not want to have his torturous and complex web of financial transfers for his benefit revealed. Mr. Mania's motivation was the desire to recoup the money owed to him by Frank Cotroneo's fraud upon him while Cotroneo was his boss. Cotroneo had diverted commissions from Robert's accounts to Cotroneo's account at BAIC. Cotroneo was willing to refund the amounts he owed if Robert Mania left BAIC. (470a). The transactions were designed by Cotroneo, the broker of record, to generate funds from many accounts and most of the proceeds went to Cotroneo for his own benefit and to his other conspirators, not Mania.

Robert Mania was a volunteer and an unpaid member of the MBOE. Robert had recused himself from voting on the insurance matters at issue which act telegraphed to all other Board members that he had a financial interest in the transactions. (597a-598a). The federal prosecutors who felt that the conflict of interest was criminal under the federal mail and wire fraud statutes despite Robert Mania's recusal from the MBOE's consideration of insurance matters

insisted Mania agree to plea guilty. Cotroneo shared some of his commissions, as the Broker of Record, for the MBOE with Robert Mania and that coupled with Mania's act to help Cotroneo conceal the disclosure statement which was not required by NJ insurance regulations was enough to support a prosecutor defined offense of wire fraud.

Robert Mania tried to make amends immediately after the FBI approached him in 2011. He agreed to plead guilty and cooperate with the FBI in their ongoing investigations of the insurance industry. He evidenced remorse and tried to ameliorate his prior conduct in 2007 – 2009 by his cooperation in 2012-2016. That cooperation was in part Mania's effort to make amends.

The amount that Cotroneo as the broker of record increased his company's commissions relating to the MBOE policies was $141,000. (470a-472a; 15a; 88a).

The reference to other numbers by the Division is a mistake and misunderstanding of the facts. Cotroneo owed Robert Mania over $250,000. The repayment of the $141,000 between 2007 and 2009 was only part of Cotroneo's debt to Mania. Other financial numbers in the Information to which Robert Mania pled guilty are also amounts traceable back to Cotroneo but have nothing to do with the MBOE. Under the United States Sentencing Guidelines (USSG), the other numbers were used to increase the sentencing Guidelines for Robert

Mania. Cotroneo had diverted at least $250,000 from Robert Mania's accounts at BAIC while he was supervising Robert. (470a-472a). Cotroneo engineered repayments to Robert through commissions owed Cotroneo as a Broker of Record on other insurance policies, but none were even arguably illegal for Robert Mania was not a public official anywhere except on the MBOE. Cotroneo, however, insisted Mr. Mania pass portions of the commissions paid to RHM, Inc. to others to fund the maintenance of Cotroneo's girlfriend and second family who Cotroneo supported but kept hidden from his publicly existing wife and family. (470a).

Robert Mania was only an unpaid volunteer on the MBOE. If he had not been on MOBE during 2007-2009 and the same financial transactions occurred where Cotroneo repaid his debts, there was no even arguably criminal conduct by Mania. For these reasons, Robert Mania's participation in the offense was a technical violation within the meaning of the ROA. No one was harmed and certainly not the MBOE which received the insurance for which they paid market rates and later another $141,000 as money Mania paid as restitution to the MBOE. (470a-472a; 15a; 88a)

The OAL Judge and the Acting Commissioner suggested that maybe Cigna was a financial victim. (E.g.74a). It was not. Cigna knew of the increased commission that Cotroneo assigned. Cigna recognized and approved of the

increased commission and created the notices acknowledging them. Moreover, the OAL Judge agreed that there was "minimal" financial harm.

Restitution and forfeiture were ordered based on the amount Robert Mania received from Cotroneo on the transactions involving Cotroneo during 2007-2009. Under the now revised United States Sentencing Guidelines (USSG) when there is no loss from a fraud scheme, all proceeds from the scheme can be the measure of appropriate restitution **but only when there** is no actual loss as in this case as set forth in 2018 USSG§ 2B1.1 Application Note 3 (B) where "additional revenue" was then substitute measure but only when there is no identifiable harm. See USSG § 8A1.2 Application Note 3(H) Sentencing Guidelines prior to 2018. The calculation under these Guidelines does not mean that there was actual harm to the MBOE or anyone else. In fact, only when there is no calculable harm is the calculation of "additional revenue" for restitution permissible. In this case, the amount of the additional revenue to RHM, Inc. which was traceable back to Cotroneo's accounts was larger than the amount relating to the MBOE which was just over $141, 000 which is the reason the restation figures in the Judgment of Conviction was $407,000. (256a - 264a)

Robert Mania's role in the offense is minor, in part, because there was no harm to the MBOE and Mania was just being given what was owed to him. That factor should favor Mr. Mania particularly since he repaid those full proceeds to

the MBOE after conviction and other amounts which totaled over $403,000, plus a $3,000 fine. The enormity of the amount of the financial penalties which Robert Mania shouldered required personal sacrifices to fully satisfy the Judgement of Conviction. Robert Mania paid over $407,000 with over $141,000 of that going to the MBOE. The MBOE was paid that money not on the basis that they had lost money, but because the sentencing guidelines required disgorgement of proceeds or increases of revenue to RHM, Inc. and Robert Mania. The alleged victim herein was made more than whole by the defendant's payments and therefore, the seriousness of the offense should be impacted and considered to be of minor significance. Robert Mania was a bit player in Cotroneo's overall fraud of many millions of dollars over decades of time in various cities (Perth Amboy and Toms River among others). Since Cotroneo did not and could not pay full restitution, it was left to other participants like Mania to pay such calculations under the USSG. Since no one was harmed by this offense, Robert Mania's minor role is logically "not serious" within the meaning of the ROA and the *Kimmelman* doctrine.

On balance all the factors under the Rehabilitated Offenders Act (see p.23 for the list of factors), except for factor one, should require a ruling that Robert Mania is now a rehabilitated offender deserving the opportunity to renew his insurance license, immediately and not until May 2029. The failure of the

Commission to provide evidence that refutes Mania's rehabilitation warrants summary judgement in this regard as well.

POINT VI

SUMMARY JUDGEMENT ON THE MERITS AS TO COUNTS II AND III OF THE OTSC AS TO MR. MANIA IS APPROPRIATE ON ALL AFFIRMATIVE DEFENSES
(Raised Below at E.g. 78a-87a and 89a)

OTSC Counts I and II are both notification violations alleging that Robert Mania (not Heidi Mania) violated the regulations by failing to inform the Division of the filing of the charges and the entry of an Order of Conviction. In both cases, Eugene Shannon was responsible for acting for the Division in 2016 and 2017 and he acknowledged corresponding, speaking with, and negotiating with Mr. Mania's counsel within days of the filings. See the Division's Statement of Undisputed Facts (623a-624a ¶27 and ¶28) (254a). Those demonstrate the lack of merit to the notification counts for both Counts I and II of the OTSC. Counsel for Mr. Mania formally notified the Division in writing and specifically asked whether the regulatory impact of the conviction on Mr. Mania's license could be ameliorated only days after the Judgement of Conviction was entered. (E.g.623a-624a). There is no merit to the claim that Mr. Mania failed to notify the Division about the Judgment of Conviction when it was entered in April 2017 and, therefore, the Acting Commissioner vacated those elements. (E.g.33a-38a).

Mania's counsel's early attempts to resolve the regulatory issues should have put the Division on notice that their filing of the OTSC should be made especially if no resolution was to be possible with the Division. The Acting Commissioner voiced an alternative rationale and reversed the OAL Judge as to Count II by holding there was no legal obligation on Mr. Mania to seek a waiver and permission to practice insurance after his conviction since he was not then practicing in the area. (36a-38a)

A. The De Minimus Rule Applies to Protect Robert Mania from Counts II and III of the OTSC (Raised Below in the Briefs)

The de minimus Rule should apply to this case not because it is not a serious matter; it is, but when Robert Mania's offense is viewed in the context of the penalties, payments, and fines plus the prison sentence already served, extracting more should be only a de minimus amount. Mr. Mania's role in the non-disclosure of a notice the Insurance Commission decided it would not require seems unnecessary and de minimus, as well. The United States Sentencing Guidelines (USSG) in 2018 used "additional revenue" or "proceeds" from an illicit scheme as the measure of appropriate restitution **but only when there is no actual loss as in this case as set forth in 2018** USSG§ 2B1.1 Application Note 3 (B) recommends that "additional revenue" be a substitute measure **but only when there is no identifiable harm.** See USSG §8A1.2 Application Note 3(H). There was no harm in this case; therefore, the alternative

standard was used in Mania's sentencing. That methodology has since been abandoned.

The OAL Judge identified Cigna as a financial victim because they paid a 1% increase in commission but Cigna had agreed to the Commission and Cigna, itself, sent notifications of the increased commission. (87a). Moreover, as the ALJ found the injury to the public was minimal (87a) and the payments by Robert Mania were extreme causing a loss to him of over $600,000 (87a).

The reason restitution/forfeiture was so large was a product of that peculiarity (now abandoned) in the United States Sentencing Guidelines (USSG) at the time of Mania's sentencing where increased revenue or proceeds can be the measure of restitution ***but only when there is no actual loss as in this case*** as set forth in 2018 USSG§ 2B1.1 Application Note 3 (B) where "additional revenue" is a substitute measure but only when there is that Cigna was a victim of the MBOE was not identifiable harm. See USSG §8A1.2 Application Note 3(H). These factors resulted in an agreement by the parties in the criminal case and Mr. Mania's then counsel that there was no loss to the MBOE which reinforces the de minimus nature of the violation alleged.[2] The crime on Mania's

[2] Mania paid for his transgression many times over because the United States Sentencing Guidelines (USSG) at the time of his sentencing defined restitution completely differently than a year later. Under today's USSG's sentencing regulation for the same offense Mr. Mania would have faced only a criminal fine levied $3,000. (263a). Instead, Mania was ordered to pay over $403,000 as forfeiture

part was a failure to pass on Cigna's notice to the MBOE. (35a) as the Acting Commissioner notes repetitively in his opinion. The OAL Judge concluded that Cigna was a victim, but the MBOE was not. (87a at 3rd full paragraph). However, Cigna knew and provided the notice of the increased commissions that accurately reflected the amount the of commissions charged by the Broker of Record (Frank Cotroneo) and also revealed who else was participating in the commissions. This Court should not assume that the large restitution/forfeiture awarded means that there was harm visited on the alleged victims in the same amount. There was no harm to the MBOE or to CIGNA because Cigna, the only party paying the commissions, knew and consented and noticed others of the commissions and participants and therefore the regulatory offense should be deemed to be de minimus.[3]

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and restitution because of the peculiarities of the USSG in effect at the time. This resulted in substantial tax penalties when Robert Mania liquidated his 401K to pay his obligations resulting in harm to Mania of over $600,000. When there was no calculated harm caused by a federal fraud offense, the USSG required a calculation of all proceeds or "increased revenue" that could be traced to the conduct identified in the criminal Information.

[3] The Division has inordinately emphasized this single act of Mania sending Cigna's Notice of Commissions and participants to himself by referencing this act more than 7 times in the Acting Commissioner's Opinion, but the Division's rejection of the adoption of the proposed Regulation requiring notification go to the insured never become law and is only mentioned once by the Acting Commissioner. (Compare fn. 5 at 18a with 29a; 34a twice; 36a 49a). If New Jersey's Insurance Department chose not to put the regulation into effect, should Mania's conduct have such significance? (87a first full paragraph).

POINT VII

ISSUES ON APPEAL

(Raised Below throughout the Briefs and filings and 2a-88a)

1. Is it appropriate to enlarge the ten-year statute of limitations when the Division had a full 3 years after they learned all the particulars of the first-time criminal defendant's federal offense to file for a revocation of license when they offer no extenuating circumstances to justify that extension?

2. Does Laches bar the Division from revoking a non-existent insurance license for 5 years from May 2024 to May 2029 (the maximum permitted) when the licensee had been denied a license by the Division 's refusal to renew the license on October 18, 2017, so that the period without a license had already lasted for 7 years to the prejudice of the now ex- licensee? (Point II).

3. Does the filing of a penalty and forfeiture action by the New Jersey Attorney General's Office in May 2017 against Robert Mania based on Robert Mania's conviction in April 2017 prove that laches should be invoked against the Division's OTSC filed five years later when Mania had already been deprived of his license for seven years by virtue of the Division's rejection on October 18, 2018 of Mania's application to renew his license on October 18, 2017? (Point II).

4. Is it arbitrary and capricious for the Acting Commissioner of the Division to revoke Robert Mania's non-existent license for an additional five years after he had already been denied the ability to use or renew his insurance license for 7 years? (Points II – VI).

5. Does the entire controversy doctrine apply to the filing of an OTSC 5 years after the New Jersey Attorney General's Office filed an OTSC also to punish Robert Mania with additional civil penalties and revocations based on identical conduct and conviction as the earlier action by the AG's Office? (Point III).

6. Does The *Kimmelman* Doctrine, based on double jeopardy principles, bar additional licensure punishments? (Point IV).

7. Is the denial of a first-time offender's ability to earn his livelihood with his insurance license a sufficient penalty imposed by the Division on October18, 2017, by denying his right to apply for a renewal, so that the *Kimmelman* Doctrine will bar an action 7 years later to revoke that now non-existent license for an addition five years? (Point IV).

8. Is an action seven years after the Division stood in the way and effectively barred the Respondent from renewing his license and earning a living in the insurance industry on October 18, 2017 barred by the *Kimmelman*

Doctrine and/or the statutes allowing the Commissioner to revoke a license for only a five year period? (Point IV).

9. Is it arbitrary and capricious for the Division to proceed to revoke a non-existent license for an additional five years, which is the maximum penalty allowed by law, until May 22, 2029 without considering the consequences of the Division ’s denial of his license renewal application on October 18, 2017, more than seven years earlier and resulting in a seven year suspension from the insurance business for the same conduct? (Points IV-VI).

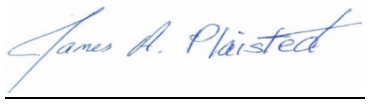
10. Does the Rehabilitated Offenders Act (ROA) apply to a first-time criminal defendant who was a model prisoner and probationer and led a model life for the eight years after his conviction so that he is entitled to an evidentiary hearing or even summary judgement since the State filed no evidence to prove he was not rehabilitated? (Point V).

11. Should the de-minimus doctrine be considered for imposing additional civil penalties for the criminal offense of fraud by non-disclosure of Commissions and recipients when the defendant disclosed his conflict of interest to his insured and recused himself from all decisions and discussions of the insured and the Insurance Commission had made a conscious decision not to adopt regulations requiring the disclosures at issue? (Point VI A).

CONCLUSION

For all the foregoing reasons, the revocation of Robert Mania's insurance license should be reversed, and the Department should be Ordered to process and grant an immediate renewal and reinstatement of that license.

Respectfully submitted,
Pashman Stein Walder Hayden



Dated: April 14, 2025 James A. Plaisted

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-003346-23

JUSTIN ZIMMERMAN, ACTING COMMISSIONER, Petitioner, v. ROBERT W. MANIA, HEIDI ANN MANIA, AND RHM BENEFITS, INC., Respondents.	Civil Action On Appeal from a Final Agency Action of the New Jersey Department of Banking and Insurance

BRIEF OF RESPONDENT, COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE

Date Submitted: July 16, 2025

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PRELIMINARY STATEMENT

Appellant, Robert W. Mania, was licensed as a resident insurance producer in New Jersey from July 23, 2003, until his license expired on September 30, 2017. In the intervening time, Mania and his wife Heidi Mania ("Heidi") opened an insurance company called RHM Benefits, Inc. ("RHM"), which became licensed as a New Jersey resident insurance producer in May 2006.

Between 2007 and 2009, Mania participated in a scheme to overcharge the Mount Olive School District more than $400,000 by fraudulently overstating insurance commissions. In July 2012, Mania entered into Plea and Cooperation Agreements with the United States Department of Justice ("DOJ"), admitting his participation in the scheme. After several years of cooperating with the DOJ, in April 2016, Mania was ultimately charged with and pleaded guilty to mail fraud for his involvement in the scheme. During the entire time that Mania participated in the scheme and then cooperated with the DOJ—from 2007 to 2016—Mania never notified the Department of Banking and Insurance ("Department") of his admittedly criminal conduct.

On May 22, 2024, the Commissioner of the Department revoked Mania's insurance producer license and imposed penalties and costs for his violations of the Producer Licensing Act of 2001 ("Producer Act"), N.J.S.A. 17:22A-26 to

-48, and related regulations. The Commissioner also found that Heidi and RHM violated the law, and penalized them, but only Mania has appealed.

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[1]

A. Background

Mania was licensed as a resident insurance producer in New Jersey from July 23, 2003. (Aa63).[2] Mania and his wife Heidi were the designated responsible licensed producers ("DRLPs") for their company, RHM. (Aa64). From March 15, 2005, through July 1, 2012, Mania owned fifty-one percent of RHM, and Heidi owned the remainder. Ibid.

Between 2007 and 2009, while he was an elected member of the MOBOE, Mania participated in a scheme to "defraud the MOBOE." Ibid. That scheme involved Mania surreptitiously increasing the brokerage commissions that he would earn for MOBOE's policy and diverting those commissions to RHM's bank account so that they could be distributed to Mania and his former boss and accomplice, Frank Cotroneo. Ibid. Between October 2007 and June 2009, Mania received, via RHM, approximately twenty-one commission checks totaling $141,527, related to the MOBOE insurance account. Ibid. To conceal

[1] Because they are closely related, the procedural history and facts have been combined to avoid repetition and for the court's convenience.

[2] "Aa" refers to Mania's appendix; "Ab" refers to Mania's brief; "Ra" refers to the Department's appendix.

his fraudulent scheme, Mania directed the MOBOE's health insurance provider to mail the annual disclosure statements for its account, which detailed the commission rate and payments to RHM, to Mania's personal post office box. (Aa35). Critical to the success of the scheme was Mania's use of his official position to intercept the annual disclosures to MOBOE from the insurance provider that detailed the rate increase and the payments to RHM, a company that the MOBOE never retained. Ibid. This allowed Mania to conceal from the MOBOE the commission rate increase and payments to Mania's company RHM and others. Ibid.

Effective June 30, 2012, Mania resigned as an owner, partner, officer, director, or member of RHM and the following day transferred his shares of RHM to Heidi, making her the sole owner. (Aa65). On July 2, 2012, Mania entered into a plea agreement and a cooperation agreement with the DOJ through the U.S. Attorney for the District of New Jersey, agreeing to plead guilty to violations of 18 U.S.C. §1341 and §2, for his involvement in the aforementioned scheme. Ibid. Among other things, the plea agreement stated, in pertinent part, that DOJ would "bring [the] agreement to the attention of other prosecuting offices, if requested to do so." Ibid.

At no time between 2012 and 2015 did Mania inform the Department of the scheme, plea agreement, and/or cooperation agreement. (Aa66). In fact, on

or about June 1, 2012, Mania applied for license renewal on behalf of RHM and answered "no" to the question of whether "the business entity, or an owner, partner, officer, director, member or manager is currently charged with committing a crime." Ibid. The renewal was approved. (Aa123-30). Just a few months later, on September 5, 2012, Mania applied for his own license renewal and again answered "no" to the question of whether he was "currently charged with committing a crime." Ibid. The renewal was approved. (Aa143).

On May 5, 2014, Mania and RHM entered Consent Order No. E14-53 with the Department, admitting they violated the Producer Act and related regulations—specifically N.J.S.A. 17:22A-40(a)(2) and (8), and N.J.A.C. 11:17A-1.3(d)—by permitting an employee of RHM to conduct business in New Jersey when that employee was not licensed as an insurance producer. (Aa67).

On September 21, 2015, Mania completed an application for his own license renewal. As he had in his September 2012 application, he again answered "no" to the question of whether he was "currently charged with committing a felony." The license renewal was granted by the Department. (Aa123-130).

A few months later, on April 21, 2016, the DOJ formally charged Mania with violating 18 U.S.C. §1341 and §2, as a result of the MOBOE scheme. (Aa67). The same day, Mania pled guilty to those charges. Ibid. The

Department did not discover Mania's fraud until April 25, 2016, when Investigator Shannon saw news articles and contacted Mania regarding the charges filed against him and his guilty plea. (Aa40, 67). On April 28, 2016, counsel for Mania confirmed that Mania had pleaded guilty to the criminal charges on April 21, 2016. Ibid.

This was the first time that Mania notified the Department of the federal investigation, the agreements with the federal government, or the criminal charges against him. Ibid. Approximately one year later, on April 25, 2017, the U.S. District Court for the District of New Jersey entered an Order convicting Mania of felony mail fraud and sentencing him to three months imprisonment, a fine of $3,000, a special assessment of $100, and restitution to MOBOE and the Morris County Counsel (for a separate scheme) in the amount of $403,912. (Aa67-68).

On May 10, 2017, the State of New Jersey, Division of Criminal Justice ("DCJ"), filed with the Superior Court of New Jersey, Law Division, Mercer County, an Order to Show Cause and verified Complaint against Mania seeking to declare forfeited any public position he held and to permanently disqualify him from holding any future position of honor, trust or profit within the State. (Aa477-516).

While DCJ's matter was pending with the Superior Court, Mania attempted to renew his producer license, but was denied by the Department on October 18, 2017. (Aa600). The Department notified Mania that he had to request a hearing to contest the license renewal denial, however, Mania did not request a hearing. (Aa407; Aa600).

On May 13, 2018, in DCJ's criminal case, the court ordered Mania to forfeit any public employment, office or position held by him, including but not limited to his public position held as a member of the Mount Olive Board of Education ("MOBOE"). Ibid. That order further barred Mania from holding public office in the future. Ibid.

B. Order to Show Cause, Answer, and Notice of Hearing

On April 7, 2022, the Department issued the four-count Order to Show Cause No. E22-30 ("OTSC") alleging that Mania, his wife Heidi, and their company RHM had violated the Producer Act, the Producer Licensing regulations, N.J.A.C. 11:17-1 to -2.17, the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 to 11:17D-2.8, and the Persons Employed in the Business of Insurance regulations, N.J.A.C. 11:17E-1.1 to -1.7. (Aa106-114).

Count One alleged that Mania failed to notify the Commissioner of the criminal prosecutions against him within thirty days, in violation of N.J.S.A. 17:22A-40(a)(18) and N.J.S.A. 17:22A-47. (Aa111).

Count Two alleged that Mania violated the Producer Act, specifically N.J.S.A. 17:22A-40(a)(2), (6), (7), (8) and (16), as well as N.J.A.C. 11:17E-1.3 and 18 U.S.C. § 1033(e)(2), when he failed to notify the Commissioner within thirty days of his conviction of mail fraud and failed to obtain a waiver from the Commissioner to be employed in the business of insurance in this State. Ibid.

Count Three alleged that Mania, his wife Heidi, and their company RHM Benefits, Inc. ("RHM") violated the Producer Act, specifically N.J.S.A. 17:22A-40(a)(2), (4), (6), (7), (8) and (16), by engaging in and admitting to the scheme to defraud the Mount Olive Township School District, for which Mania pled guilty and was convicted of mail fraud, a class-3 felony. Ibid.

Count Four alleged that Mania, Heidi and RHM violated N.J.S.A. 17:22A-40(a)(1), (2), (4), (8), and (16), along with N.J.S.A. 17:22A-47(b), by failing to report Mania's criminal prosecution in renewal applications submitted to the Department. (Aa112). More specifically, the Department alleged that Respondents' responses were false because they did not disclose Mania's plea agreement with the federal government to plead guilty to fraud for the fraudulent

MOBOE scheme, thus providing incorrect, misleading, incomplete or materially untrue information in a license application. Ibid.

On April 26, 2022, Mania submitted a one-page Answer to the OTSC, generally disputing all the allegations contained in the OTSC and requesting a hearing. (Aa328). On May 4, 2022, the matter was transmitted to the Office of Administrative Law ("OAL") as a contested case. (Aa3).

C. Cross-Motions for Summary Decision and Initial Decision

On May 10, 2023, the Department filed a motion for summary decision. (Aa63). On July 7, 2023, Mania, Heidi, and RHM filed opposition to the Department's motion and filed a cross-motion for summary decision. Ibid.

On January 8, 2024, the Administrative Law Judge ("ALJ") found, as alleged in Count One of the OTSC, that Mania violated N.J.S.A. 17:22A-40(a)(18) and N.J.S.A. 17:22A-47 because he was required to notify the Commissioner—after first obtaining the U.S. Attorney's permission to do so–within thirty days of executing the plea agreement, but had failed to do so. (Aa73).

The ALJ also determined, as alleged in Count Two of the OTSC, that Mania continued to work in the insurance industry after having been convicted of a felony without first obtaining a waiver from the Commissioner, in violation

of N.J.S.A. 17:22A-40(a)(2), (6) and (7), and N.J.A.C. 11:17E-1.3(a). (Aa73-75).

The ALJ further concluded, as alleged in Count Three of the OTSC, that Mania and RHM participated in the scheme to fraudulently overstate insurance commissions. (Aa76). The ALJ also concluded that Heidi was personally responsible, under N.J.A.C. 11:17A-1.6(c) for all of the actions taken by RHM, or attributed to RHM, during the time frame that the fraudulent scheme took place because she owned forty-nine percent of the company. Ibid. For their collection involvement in those actions, the ALJ found Mania, RHM and Heidi all responsible for violating N.J.S.A. 17:22A-40(a) subsections (2), (4), (6), (7), (8) and (16). Ibid.

Finally, the ALJ was not convinced that, prior to his April 2016 conviction, Mania had any obligation to disclose the federal investigations on renewal applications, as alleged in Count Four of the OTSC. (Aa78). Therefore, it found that Robert did not violate N.J.S.A. 17:22A-40(a)(1) when he applied to renew his applications on June 1, 2012, and September 5, 2012. Ibid.

On the other hand, the renewal application that Heidi submitted on behalf of RHM on April 25, 2016, days after Robert was formally charged with mail fraud, violated N.J.S.A. 17:22A-40(a)(1), because at that point Robert – still a DLRP for RHM – was "currently charged with committing a crime." Ibid.

The ALJ also addressed each of Mania's affirmative defenses and issues raised in his cross-motion, found all of them to be unfounded, and denied the Mania's summary decision motion. (Aa89).

In determining the appropriate civil penalty, the ALJ considered the factors set forth by the New Jersey Supreme Court in Kimmelman v. Henkels & McCoy, Inc. 108 N.J. 123, 137-39 (1987). (Aa84-89). After a careful consideration of the Kimmelman factors, the ALJ recommended a total civil penalty against all of the respondents, jointly and severally, in the amount $20,000, which was "well less than the maximum allowed under the Act," to be assessed jointly and severally amongst all of the respondents, for the Producer Act violations under N.J.S.A. 17:22A-45(c). (Aa88). The ALJ also recommended that all respondents be required to pay the Department's costs of investigation in the amount of $1,612.50, under N.J.S.A. 17:22A-45(c). Ibid. Finally, the ALJ recommended that the Commissioner revoke Mania's insurance producer license, along with those of his Heidi and RHM. Ibid.

D. Commissioner's Final Decision and Order

On May 22, 2024, the Commissioner issued a Final Decision and Order, adopting the ALJ's findings of facts though modifying portions to "add more detail." (Aa26-31).

Regarding the allegations in Count One of the OTSC, the Commissioner disagreed that Mania had violated N.J.S.A. 17:22A-40(a)(18) or N.J.S.A. 17:22A-47. (Aa32-33). The Commissioner found that Mania did not need to notify the Commissioner of his criminal prosecutions because the plea agreement did not constitute a de facto indictment, formal charges were not filed until April 21, 2016, and there was no evidence in the record regarding if or when an initial pretrial hearing date was held. Ibid.

The Commissioner accepted the ALJ's determination on Count Two that Mania violated N.J.S.A. 17:22A-40(a)(2), (6), and (7) because he was convicted of federal mail fraud, further noting that concealment of the disclosures was fraud. (Aa35). The Commissioner modified the ALJ's conclusion regarding N.J.S.A. 17:22A-40(a)(8) and (16), finding that Mania also violated these provisions because he used his official position to conceal the annual disclosures demonstrated unworthiness and was a dishonest practice. (Aa36). Further, Mania's plea to federal mail fraud, a fraudulent act, violated N.J.S.A. 17:22A-40(a)(16). Ibid. However, the Commissioner rejected the ALJ's determination that Mania violated N.J.A.C. 11:17E-1.3 and 18 U.S.C. §1033(e)(2), finding no evidence that Mania had been employed in the business of any insurance between his conviction and his license expiration. (Aa37-38).

The Commissioner adopted the ALJ's determination that the allegations in Count Three of the OTSC were not barred by the statute of limitations and further adopted the ALJ's conclusion that Mania and RHM violated N.J.S.A. 17:22A-40(a)(2), (4), (6), (7), (8), and (16) by engaging in and admitting to the scheme to defraud the MOBOE. (Aa38).

Finally, the Commissioner adopted the ALJ's determination that laches did not apply to Count Four because there is an applicable statute of limitations under N.J.S.A. 2A:14-1.2(a), which governs this action. (Aa44). However, while the Commissioner adopted the ALJ's findings with regard to the renewal applications predating Mania's conviction, agreeing that those questions were answered accurately with regard to Mania's criminal activity, he rejected the ALJ's finding that RHM and Heidi violated N.J.S.A. 17:22A-40(a)(1) when submitting an application to renew RHM's license on April 25, 2016. (Aa44-45). The renewal application asked if a business entity owner, partner, officer, director or member of RHM was currently charged with a felony. (Aa45). On April 25, 2016, though he was a DLRP, Mania was not an owner or officer of RHM. Ibid. Thus, neither Heidi nor RHM violated the Producer Act by answering "no" to that question. Ibid.

The Commissioner then revoked Mania's insurance producer license. (Aa47). Heidi and RHM, however, were subjected to six-month license suspensions. (Aa49). The Commissioner also ordered Mania to pay a civil penalty of $5,000 for the violations in Count Two of the OTSC, participating in and benefitting from a fraudulent scheme for which he was convicted of a felony. (Aa35). For the violations in Count Three, the Commissioner ordered that Mania, Heidi, and RHM were jointly and severally liable for a civil penalty of $10,000.00. (Aa59). The Commissioner also held Mania, Heidi, and RHM jointly and severally liable for the costs of investigation in the amount of $1,612.50. Ibid.

This appeal by Mania followed. RHM and Heidi have not appealed.

ARGUMENT

POINT I

THE COMMISSIONER'S FINAL ORDER SHOULD BE AFFIRMED BECAUSE IT IS REASONABLE AND SUPPORTED BY SUBSTANTIAL, CREDIBLE EVIDENCE IN THE RECORD (Addressing Points Six and Seven (Subpart 11) of Mania's Brief).

The Commissioner's Final Decision and Order is reasonable and supported by substantial, credible evidence in the record, and should therefore be affirmed. Administrative agencies have broad discretion in adjudicating disputes. In re Vey, 124 N.J. 534, 543-544 (1991). An appellate court's role

"in reviewing an administrative agency's final decision is exceedingly limited." In re Taylor, 158 N.J. 644, 656 (1999).

"Ordinarily an Appellate Court will reverse the decision of an administrative agency only if it is arbitrary, capricious or unreasonable or it is not wholly supported by substantial credible evidence in the record as a whole." Henry v. Rahway State Prison, 81 N.J. 573, 579-580 (1980). "The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the person challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443–444 (App. Div. 2006). The Commissioner's findings and conclusions should not be disturbed absent a finding that they are arbitrary or capricious. In conducting its review, an appellate court cannot "engage in an independent assessment of the evidence as if it were the court of first instance." Taylor, 158 N.J. at 656. Rather, if the "court finds sufficient credible evidence in the record and the inferences to be drawn therefrom, it must uphold the agency's decision even if the court feels it would have reached a different result." Campbell v. N.J. Racing Comm'n, 169 N.J. 579, 587 (2001).

And this court should afford deference to the agency's factual findings, conclusions of law, and determinations about the appropriate penalties. "An appellate court must grant deference to an agency's expertise when such expertise is relevant to the case. When resolution of a legal question rests upon

factual issues within an agency's province, those questions should be resolved in accordance with the agency's fact finding." Id. at 588.

This deference is even stronger when the agency "has been delegated discretion to determine the specialized and technical procedures for its tasks." City of Newark v. Nat. Res. Council in the Dep't of Envtl. Prot., 82 N.J. 530, 540 (1980). The Commissioner's expertise in the field of insurance must be given great weight. In re Aetna Casualty & Sur. Co., 248 N.J. Super. 367, 376 (App. Div. 1991).

There is ample support in the record to support the Commissioner's decision. Mania pleaded guilty to and was convicted of federal mail fraud, a felony that by its very nature involves the breach of trust or dishonesty. (Aa33). To conceal his fraudulent scheme, Mania caused the MOBOE's health insurance provider to mail the annual disclosure statements for its account, which detailed the commission rate and payments to RHM, to Mania's personal post office box. (Aa35). Mania's use of his official position to intercept the disclosures was critical to the success of his scheme. Ibid. While Mania may not have pled guilty to overcharging commissions, he participated and benefitted from a scheme where commissions were increased without the customer's knowledge. Ibid.

Under N.J.S.A. 17:22A-40(a)(2), an insurance producer may not violate any insurance law or regulation. Additionally, under N.J.S.A. 17:22A-40(a)(6), an insurance producer may not be convicted of a felony or crime of the fourth degree or higher. And finally, under N.J.S.A. 17:22A-40(a)(2), an insurance producer may not commit any insurance unfair trade practice or fraud. Mania was convicted of mail fraud in violation of 18 U.S.C. § 1341 and §2, a felony. Further, the concealment of the MOBOE disclosures was fraud. Mania cannot reasonably deny that he violated those statutes when he pleaded guilty to and then convicted of federal mail fraud, a felony involving breach of trust or dishonesty. (Aa35).

The record also supports the Commissioner determination that Mania was involved in a scheme to overstate insurance commissions, and prevent disclosure to the insured of those inflated commissions, between 2007 and 2009. (Aa38). Because of that scheme, Mania [and RHM] received payments and distributed inflated commissions totaling $141,527.00. Ibid. The Department did not discover Mania's illegal conduct until April 2016, and the OTSC was issued less than ten years after that date, and therefore the allegations of Count Three were not barred under the statute of limitations. (Aa40).

Under N.J.S.A. 17:33A-40(a)(2), an insurance producer may not violate any insurance law or regulation. Additionally, under N.J.S.A. 17:33A-40(a)(4),

an insurance producer may not improperly withhold, misappropriate or convert any monies or properties received while doing business, nor may an insurance producer be convicted of a felony or a crime of the fourth degree or higher, under N.J.S.A. 17:33A-40(a)(6). Further, unfair trade practices or fraud, fraudulent or dishonest practices, and any fraudulent acts are prohibited by N.J.S.A. 17:33A-40(a)(7), (8) and (16). As noted above, while he was a member of the MOBOE, Mania and others participated in a scheme to defraud the school district between 2007 and 2009 by inflating commissions and diverting those funds to himself and his cohorts. (Aa41). Mania pled guilty to these crimes and was convicted of a felony of the fourth degree or higher. Ibid. Thus, as the Commissioner concluded, Mania violated the aforementioned provisions of the Producer Act by misappropriating the commissions via fraud, and then being convicted for same. (Aa42).

Mania challenges the Final Order on the basis that it demonstrated a "lack of merit" as to Counts One and Two because Mania's counsel timely notified the Department of his conviction. (Ab37). However, that argument provides no basis to disturb the Commissioner's decision, at least as to Count One, because the Commissioner has already dismissed that count. (Aa33). In fact, in his Final Decision and Order, the Commissioner actually made no findings "as to whether [Mania] failed to notify the Department of his conviction within 30 days."

(Aa36). In other words, the Commissioner's determination that Mania violated the Producer Act had nothing to do with "notification violations," as alleged by Mania here. (Ab37).

Mania also argues that the "de minimus rule" should apply to protect him from Counts Two and Three of the OTSC, and represents that this was raised below. (Ab38-40). This is inaccurate. Mania raised this defense below with regard to Count Four of the OTSC – a count for which he was not found by the Commissioner to have committed any violations – but it was not raised in relation to Counts Two or Three of the OTSC. (Aa1-60). Since Mania failed to raise this argument below, and it should not be considered here. J.K. v. N.J. State Parole Bd., 247 N.J. 120, 138 n.6 (2021).

Even if Mania had argued below that the "de minimus rule" absolved him of any liability under Counts Two and Three of the OTSC, he fails to cite any authority that defines this "rule" or applies it to a civil administrative matter. (Ab38-40). Rather, Mania refers vaguely to federal criminal sentencing guidelines, which are completely unrelated to this case, and seems to argue that this court should just ignore the facts and the law and decide Mania's egregious violations just were not that bad. Since this argument has no basis in fact or law, Mania's "de minimus rule" argument should be disregarded.

A. Mania's Claim that Count Three of the OTSC was Barred by the Statute of Limitations Lacks Merit

(Addressing Points One and Seven (Subpart 1) of Mania's Brief).

The OTSC was issued less than ten years after the Department learned about Mania's scheme to defraud the MOBOE. Therefore, the Commissioner properly found that the discovery rule tolled the statute of limitations, and Mania violated the Producer Act by his illegal scheme, as alleged in Count Three of the OTSC. (Aa38-42).

The statute of limitations governing civil actions commenced by the State or its political subdivisions mandates that unless otherwise provided by law, "any civil action commenced by the State shall be commenced within ten years next after the cause of action shall have accrued." N.J.S.A. 2A:14-1.2(a). Since the OTSC was based, in part, on improprieties first accruing in 2007 through 2009, Mania claims that any liability for those illegal activities is precluded. (Ab39). This argument reflects a fundamental misunderstanding of the "discovery rule."

The discovery rule is essentially a rule of equity developed to avoid harsh results that otherwise would flow from mechanical application of a statute of limitations. Vispisiano v. Ashland Chem. Co., 107 N.J. 416, 426 (1987). It was created by the courts to protect unsuspecting persons from statutory limitations periods during which a claim must be brought or forever lost. See Lopez v. Swyer, 62 N.J. 267, 272-74 (1973).

A cause of action does not accrue under that doctrine "until the [plaintiff] discovers, or by an exercise of reasonable diligence and intelligence should have discovered that he may have a basis for an actionable claim." Id. at 272. "The discovery rule is essentially a rule of equity" that allows a plaintiff relief from a statute of limitations bar. Id. at 272-73.

The statute of limitations applicable to the present action does not measure the limitations period in terms of a precise date on which the limitations period begins to run, but on the "accrual" of a cause of action. N.J.S.A. 2A:14-1.2(a). (statute directs the commencement of an action within a ten-year time period "after the cause of action shall have accrued"). It is settled law in this State that the equitable tolling principle set forth in the discovery rule is peculiar to statutes of limitations with "accrual" language like N.J.S.A. 2A:14-1.2(a). See Presslaff v. Robins, 168 N.J. Super. 543, 546 (App. Div. 1979); Evernham v. Selected Risks Ins. Co., 163 N.J. Super. 132, 136 (App. Div. 1978).

The "accrual" category of limitations provisions, like N.J.S.A. 2A:14-1.2(a), are universally interpreted as modifying the conventional limitations rule to "the extent of postponing the commencement of accrual of the cause of action until plaintiff learns, or reasonably should learn, the existence of that state of facts which may equate in law with a cause of action." Burd v. New Jersey Bell Tel. Company, 76 N.J. 284, 291 (1978).

In fraud cases, as here, the rigid and automatic adherence to N.J.S.A. 2A:14-1.2(a) would produce the harsh and unjust result of precluding the Department from proceeding with credible and provable causes of action against this licensee because of circumstances beyond its control. The discovery rule is justified by the victim's lack of awareness of the fraud, which is the wrongdoer's very object. Catena v. Raytheon Co., 447 N.J. Super. 43, 52 (App. Div. 2016). The rule thus prevents the defendant from benefitting from his own deceit. Ibid. The linchpin of the discovery rule is the unfairness of barring claims of unknowing parties. Mancuso v. Neckles, 163 N.J. 26, 29 (2000).

The date of discovery is when the fraud was – or reasonably should have been – discovered. Catena, 447 N.J. Super. at 55. Here, the has never been a dispute that the Department discovered Mania's fraud on April 25, 2016, when Investigator Shannon saw news articles and contacted Mania regarding the charges filed against him and his guilty plea. (Aa40). In fact, Mania even refers to this in his own brief as the date on which the Department "definitively found out about the basis for their Complaint." (Ab12; see also Ab14).

Consequently, April 28, 2016, was the date that triggered the beginning of the limitation period given this was when the Department was first alerted to the possibility of a cause of action against Mania under the Producer Act.

Accordingly, under Catena, the last possible date on which the Department could have pursued its OTSC was April 28, 2026.

On April 7, 2022, the Commissioner issued the OTSC against Mania. A period of six years lapsed between the Department's discovery of Mania's criminal conviction and the commencement of this proceeding. Therefore, the OTSC is not time-barred.

Mania argues that "when the party needing the extension has adequate time to file their cause of action, after discovering it, they are required to file the action within the applicable statute of limitations," incorrectly citing Burd for this proposition. (Ab12). Mania goes on to argue that "[t]he Division discovered the details of the filed [C]riminal Information in April 2016 and in April 2017 when Mania was charged and then convicted . . . and then the Division sat on their rights after discovering the events giving rise to the cause of action in April 2016 until the OTSC was finally filed in April 2022 – six years later." (Ab14-15). Thus, "the extension doctrine does not apply in a case such as the present matter where the party had three years until the expiration of the statute of limitations." (Ab15).

In making this argument, Mania conflates the time when a "claimant knows or reasonably knows the facts" with the time when a claimant "learns or should learn the state of the law positing a right of recovery upon the facts

already known to or reasonably known by the plaintiff." Burd, 76 N.J. at 291-92. And as such, he misrepresents the actual holding in Burd.

In Burd, the claimant knew the pertinent facts – that he had a heart attack on September 7, 1971 - on the day it occurred. Id. at 287. The claimant did not realize that another entity may be legally liable for that heart attack until he spoke with an attorney on October 7, 1972. Id. at 288. When the action was not instituted until May 16, 1974, and the two-year statute of limitations became an issue, Burd asked the court to start the clock on October 7, 1972, not September 7, 1971, so that his claim would not be time-barred. Ibid. In declining to accept this calculation, the Supreme Court stated, "[t]here is no suggestion in any of the leading cases in this area that accrual of the cause of action is postponed until plaintiff learns or should learn the state of the law positing a right of recovery upon the facts already known to or reasonably knowable to the plaintiff." Id. at 291-92.

This is not analogous to the case at hand. The Department has not asked for the statute of limitations to be postponed until it learned "the state of the law positing a right of recovery upon the facts already known" to it. Rather, the Department properly sought calculation of the statute of limitations to begin on the date that the facts became known to it, which was April 26, 2016. This is squarely supported by the Supreme Court's holding in Burd.

Mania's reliance upon Judge Clifford's concurrence in Burd to argue that a claim is barred by the statute of limitations when "a suit could have been filed before the expiration" of the statute of limitations is similarly misapplied. (Ab13). As a preliminary matter, Judge Clifford's concurrence is dicta and not precedential. See Lucent Technologies, Inv. v. Township of Berkeley Heights, 201 N.J. 237, 252 (2010) ("[E]xtrapolating legal principles needlessly past their proper context, as the concurrence does, has a name: it is dicta, something that 'is unnecessary to the decision in the case and therefore not precedential.'"). Furthermore, even if the OTSC "could have been filed" before 2019—ten years from the end of Mania's criminal activities—as suggested in the concurrence, there is nothing within the record to address, let alone establish convincingly, that the Department had "more than ample time" to issue its OTSC any sooner than it did.

Mania also argues that Presslaf and Evernham, are "not helpful" to the Department because, in both instances, the courts denied any extension of the statute of limitations based upon the discovery rule. (Ab15). Again, Mania's argument relies upon a flawed understanding of those cases where the limitation provisions were based upon a fixed objective event.

For example, Presslaff was a wrongful death suit predicated upon medical malpractice. Presslaff v. Robins, 168 N.J. Super. 543, 546 (App. Div. 1979).

The Wrongful Death Act limitations provision, N.J.S.A. 2A:31-3, read as follows: "Every action brought under this chapter shall be commenced within 2 years after the death of the decedent, and not thereafter." Presslaff, 168 N.J. Super. at 546. That particular statute fixed a specified objective event – the decedent's date of death – to incept the period of time within which an action must be brought. Ibid. Similarly, Evernham was an action under the Automobile Reparation Reform Act, N.J.S.A. 39:6A-13.1(B), which contained a limitation provision based upon a fixed objective event. Ibid.

In contrast, a general statute of limitations, like the one at issue here, directs the institution of an action "within ten years next after the cause of action shall have accrued." N.J.S.A. 2A:14-1.2(a). As explained above, this falls within the "accrual" category of limitation provisions, and it is settled law that the discovery principle is applicable. Ibid. Consequently, the "extension or estoppel periods" sought and rejected in Presslaff and Evernham, to which Mania analogizes, are irrelevant here. (Ab16).

Therefore, the Commissioner's finding of liability under Count III was proper, and not time-barred.

B. Laches Does Not Apply (Addressing Points Two and Seven (Subparts 2 and 3) of Mania's Brief).

Mania argues that Counts Two and Three of the OTSC are barred by the doctrine of laches because an OTSC "is … an equitable action and therefore

equitable defenses like laches should apply." (Ab17). However, Mania's argument lacks merit.

First, the Department's OTSC was filed within the applicable statute of limitations. And second, any perceived delay in the issuance of the Department's OTSC did not prejudice Mania.

Generally speaking, a statute of limitations applies to legal actions, while laches applies to equitable actions. Kopin v. Orange Prods., Inc., 297 N.J. Super. 353, 373 (App. Div. 1997). Our Supreme Court has declared that the doctrine of laches is "an equitable defense that may be interposed in the absence of the statute of limitations." Borough of Princeton v. Bd. of Chosen Freeholders, 169 N.J. 135, 157 (2001). Consequently, any inquiry into whether the Department's action is time-barred should end there. As explained above, the Department's OTSC was filed within ten years of learning of Mania's conviction for the criminal acts that gave rise to the cause of action. As such, Mania's argument that this proceeding is time-barred lacks merit.

Notwithstanding the applicable statute of limitations, Mania's argument that laches bars Counts Two and Three of the OTSC still fails. Laches is an equitable doctrine, operating as an affirmative defense that "precludes relief when there is an 'unexplainable and inexcusable' delay in exercising a right,

which results in prejudice to another party." Fox v. Millman, 210 N.J. 401, 417 (2012) (citing County of Morris v. Fauver, 153 N.J. 80, 105 (1998)).

Laches is not governed by fixed time limits. See Hinners v. Banville, 114 N.J. Eq. 348, 357 (E. & A. 1933). A mere lapse of time is not, in and of itself, sufficient to give rise to the defense of laches. See Matarrese v. Matarrese, 142 N.J. Eq. 226 (E. & A. 1948); Federal Trust Co. v. Taylor, 3 N.J. Super. 373 (Ch. Div. 1949).

Instead, laches relies on analysis of time constraints that are "characteristically flexible." Lavin v. Bd. of Educ., 90 N.J. 145, 151 (1982). Unlike the mechanical application of a fixed time prescribed by a statute of limitations, whether laches should be applied depends upon the facts of the particular case and is a matter within the sound discretion of the trial court. Mancini v. Twp. of Teaneck, 179 N.J. 425, 436 (2004).

When evaluating a laches defense, the court considers three factors as being especially relevant: (1) whether an alleged act is unreasonably distant in time, (2) whether a plaintiff knew or should have known of a valid claim based on that act, and (3) whether the plaintiff's delay in filing a claim has caused undue prejudice to a defendant. Ibid. No one factor controls the analysis and some factors are interrelated. Ibid.

Laches might apply "to shorten an otherwise permissible period for initiation of litigation, but only in the rarest of circumstances and only overwhelmingly equitable concerns would allow for that result." Fox, 210 N.J. at 422. Such rare circumstances may occur if the moving party has unreasonably delayed and the delay has prejudiced the other party. Ibid. The doctrine of laches cannot operate to extend laches so broadly to cases governed by statutes of limitations. Id. at 423.

The party asserting laches has the onus to show that they have been prejudiced by the unreasonable delay. Id. at 422. This burden is particularly high where the movant seeks to assert laches against a government entity carrying out an essential governmental function in the interest of the public. Town of Secaucus v. City of Jersey City, 19 N.J. Tax 10, 27 (2000).

As already noted, that is no basis to invoke laches because the "applicable statute of limitations of ten years under N.J.S.A. 2A:14-1.2(a), governs this action" and the OTSC was timely filed. Ibid.

Even if it did not apply, laches would not bar this action because the date of Mania's illegal actions in relation to the date that the OTSC was issued are not unreasonably distant in time, especially when one considers Mania's conscious decision to conceal his years-long cooperation with the DOJ from the Department. (Aa44). Given that veil of secrecy, the Department had no way to

know it had a valid claim against Mania based upon that fraudulent activity. However, once the Department did learn of Mania's bad acts, the OTSC was filed within the appropriate statute of limitations period of ten years, as tolled by the discovery rule. The doctrine of unclean hands forbids Mania from benefitting from his concealment because "[e]quity will not aid a fraud doer." Herder v. Garman, 106 N.J. Eq. 13 (Ch. 1930). Under that doctrine, "[a] suitor in equity must come into court with clean hands and he must keep them clean after his entry and through the proceedings." Am. Dream at Marlboro, L.L.C. v. Plan. Bd. of Marlboro, 209 N.J. 161, 170 (2012). Mania does not have clean hands here.

Additionally, nothing in the record demonstrates that Mania was prejudiced by the Department's delay. Mania never articulated or established that any evidence was lost via the lapse of time. (Aa9). In reliance upon Chance v. McCann, 405 N.J. Super. 547, 569 (App. Div. 2009), Mania argues that this court should ignore the statute of limitations and, instead use laches to bar Counts Two and Three of the OTSC. (Ab19). However, Mania's reliance upon this case demonstrates a fundamental misunderstanding of the facts in that matter and how they impacted the holding.

In Chance, the court found that the equitable defense of laches should be considered even though "the case was timely filed under the applicable statute

of limitations" because McCann was "significantly prejudiced by the fact that Chance [was] no longer living." Chance, 406 N.J. Super. at 569. Otherwise, McCann faced an enhanced burden under N.J.S.A. 2A:81-2 to establish Chance's alleged statements by clear and convincing proof. Ibid. In addition, several other potential witnesses had passed away. Ibid.

Here, there is no analogous prejudice on the record. In their exceptions to the initial decision, Heidi argued that laches applied to Count Four of the OTSC because she relied upon the advice of a now-retired attorney, who is thusly "unavailable," to answer the license renewal questionnaires. (Aa44). However, Count Four, which was resolved in favor of Mania, is not challenged here, nor is Heidi an appellant. In his present challenge to his punishment under Counts Two and Three of the OTSC, Mania makes no argument at all that he relied upon the promises, statements or acts of anyone who is now deceased or mentally incapacitated and therefore unavailable. Therefore, the court's reasoning in Chance is inapplicable.

Mania also argues in his brief that "the denial of [his] license in October 2017 based on these same facts is an unconscionable delay that has extended his time of revocation and suspension for 5+ years as permitted by law to 11 and ½ years." (Ab18). Mania's logic seems to be that he has suffered prejudice because he has been unable to work in the insurance industry since his release

from prison in 2017 and that, if the Department had issued its OTSC on an earlier date, he could have returned to work in that industry already. Ibid. This argument lacks merit.

First, this argument relies on speculation and presupposes that Mania's insurance producer license would have been automatically reinstated after a period of five years. That premise is flawed. Reinstatement is neither automatic nor a given. A person whose license has been revoked may apply for reinstatement after five years. N.J.A.C. 11:17D-2.7(a). Furthermore, the applicant shall demonstrate compliance with the professional qualifications requirements of N.J.S.A. 17:22A-32(a)(3) and (5) and explain his activities since revocation. N.J.A.C. 11:17D-2.7(b) and (c). Additionally, since the revocation here was based upon the conviction of a crime, a report from Mania's chief probation officer must be submitted with the application for licensing. N.J.A.C. 11:17D-2.7(d). Finally, the Commissioner and the Department must determine if reinstatement is warranted. N.J.A.C. 11:17D-2.7(e) and (f). The Producer Act provides many grounds for refusal to issue a license. N.J.S.A. 17:22A-40.

Second, Mania fails to disclose that he chose not to appeal the Department's decision to deny his license renewal on October 18, 2017. (Aa600). The Department notified Mania that he had to request a hearing to

contest the license renewal denial, which he failed to do. (Aa407; Aa600). Given that Mania did not contest the Department's denial of his license renewal, he cannot now bootstrap the date of denial to his calculation of the duration of his revocation here in attempt to manufacture some sort of prejudice.

There is no basis to apply the doctrine of laches to Counts Two and Three of the OTSC.

C. Mania's Claim that the Entire Controversy Doctrine Bars Counts Two and Three of the OTSC Lacks Merit (Addressing Points Three And Seven (Subparts 3 And 5) Of Mania's Brief)

Mania argues that because the State Division of Criminal Justice filed an action against him in 2017, while this state administrative proceeding was filed separately in 2022, this matter is barred by the entire controversy doctrine. (Ab19-22). Mania further argues that the "[OAL] and the New Jersey Superior Court . . . are both arms of the New Jersey judicial system" and thus the entire controversy doctrine should have been applied. (Ab21). This argument misunderstands the applicable facts and law. The Commissioner correctly determined that the purpose of the action brought against Mania in Superior Court was different than this administrative proceeding and therefore the present matter is not prohibited by the entire controversy doctrine.

The entire controversy doctrine embodies the principle that the adjudication of a legal controversy should occur in one litigation and in only

one court. Bank Leumi USA v. Kloss, 243 N.J. 218, 220 (2020). Under this doctrine, the non-joinder of claims or parties that are required to be joined shall result in the preclusion of the omitted claims. Ditrolio v. Antiles, 142 N.J. 253, 266 (1995) (citing R. 4:30A, which codified the entire controversy doctrine)). "Fairness in the application of the entire controversy doctrine focuses on the litigation posture of the respective parties and whether all of their claims and defenses could be most soundly and appropriately litigated and disposed of in a single comprehensive adjudication." Wadeer v. New Jersey Mfrs. Ins. Co., 220 N.J. 591, 606 (2015) (quoting Cafferata v. Peyser, 251 N.J. Super. 256, 277 (App. Div. 1991)).

In considering fairness to the party whose claim is sought to be barred, a court must consider whether the claimant has "had a fair and reasonable opportunity to have fully litigated that claim in the original action." Gelber v. Zito P'ship, 147 N.J. 561, 565 (1997). The test to determine whether claims must be brought in a single action is:

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

Moreover, while courts have recognized that principles of judicial administration, like the entire controversy doctrine, have an appropriate role in the administrative process, they have also stressed the paramount role of the agency head to implement public policy. Thornton v. Potamkin Chevrolet, 94 N.J. 1, 5 (1983). Therefore, in applying such court-based precepts, like the entire controversy doctrine, to administrative agencies, their potential for achieving sound results must be tempered by a full appreciation of an administrative agency's statutory foundations, its executive nature, and its special jurisdictional and regulatory concerns. Hackensack v. Winner, 81 N.J. 1, 29 (1980).

Mania's suggestion that the OAL and the Superior Court "are both arms of the New Jersey judicial system" (Ab21) is simply inaccurate. To start with the obvious, the OAL and the Superior Court are not even the same branch of the government. The OAL is an independent office in the Executive Branch of the State Government, created by the Legislature and given the power to prescribe and enforce its own rules of practice and procedure. Wood v. Department of Cmty. Affairs, Bureau of Regulatory Affairs, 243 N.J. Super. 187, 195-96 (App. Div. 1990). The OAL had no authority to issue the order on appeal, only the Commissioner did. (Aa1-60).

The Commissioner correctly concluded that the entire controversy doctrine does not apply here because only the Commissioner is authorized to revoke an insurance producer license for a violation of the Producer Act, not the Superior Court. N.J.S.A. 17:22A-40. Moreover, the Department of Banking and Insurance is an agency separate and distinct from the State of New Jersey Division of Criminal Justice ("DCJ"), and serves a different public purpose. The action brought by the DCJ in Superior Court was brought under N.J.S.A. 2C:51-2, a criminal statute, which provides that a person holding public office or position who is convicted of an offense shall forfeit the office if certain conditions are met. (Aa25). The Commissioner does not have the authority to enforce the New Jersey criminal statutes, and therefore, could not order that Mania forfeit his public office or pension. Ibid.

Application of the entire controversy doctrine to an administrative proceeding like this one would ignore jurisdictional, legal, and regulatory requirements. Hackensack, 82 N.J. at 29 (finding that the public employment relations commission should have abstained from exercising its concurrent jurisdiction over that of the civil service commission in petitioner firefighters' labor dispute with respondent city). Moreover, misapplication of the entire controversy doctrine here would ignore the paramount role of the Commissioner to implement public policy. Thornton, 94 N.J. at 5 (stating that the doctrine did

not apply where the two forums were so distinct in the hearing and remedies provided and where enforcement of the public policy of preventing discrimination was charged to the civil division).

Thus, Mania's argument regarding the entire controversy doctrine fails.

POINT II

THE COMMISSIONER'S REVOCATION OF MANIA'S INSURANCE PRODUCER LICENSE AND THE ASSESSMENT OF PENALTIES ARE SUPPORTED BY SUBSTANTIAL CREDIBLE EVIDENCE (Addressing Points Four and Seven (Subparts 1, 2, 4, 5, 6, 7, 8 and 9) of Mania's Brief)

There is no basis to disturb the penalty imposed. The Commissioner's authority to assess civil penalties for violations of the Producer Act and related regulations stems from N.J.S.A. 17:22A-45(c) which provides that: "Any 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 . . . ."

Review of an agency's choice of sanction is limited. In re License Issued to Zahl, 186 N.J. 341, 353 (2006). Deference is afforded because of the "expertise and superior knowledge" of agencies in their specialized fields. Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992). A penalty imposed by an agency head should be modified only if the agency mistakenly "exercised its discretion or misperceived its own statutory authority" or if

modification is "necessary to bring the agency's action into conformity with its delegated authority." Division of Alcoholic Beverage Control v. Maynards, Inc., 192 N.J. 158, 183 (2007) (quoting In re Polk License Revocation, 90 N.J. 550, 578 (1982)). A sanction will be set aside only if it is arbitrary, capricious, or unreasonable. In re Scioscia, 216 N.J. Super. 644, 660 (App. Div. 1987).

The Producer Act's penalties serve a distinct remedial purpose as they seek to eradicate the harms it prohibits. N.J.S.A. 17:22A-45(c). The Commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer license for violating the Producer Act. N.J.S.A. 17:22A-40(a).

The Commissioner is charged with the duty to protect the public welfare and to instill public confidence in both insurance producers and the industry as a whole. N.J.S.A. 17:1-2. As the Commissioner stated, "An insurance producer collects money from insureds and acts as a fiduciary to both the consumers and the insurers they represent. Accordingly, the public's confidence in a licensee's honesty, trustworthiness, and integrity are of paramount concern." (Aa48). Further, the "nature and duty of an insurance producer calls for precision, accuracy and forthrightness. A producer is held to a high standard of conduct, and should fully understand and appreciate the effect of fraudulent or irresponsible conduct on the insurance industry and on the public." (Aa48).

In this case, the Commissioner revoked Mania's producer license and imposed a monetary penalty in the amount of $5,000 against Mania individually, as well as an additional penalty of $10,000 against all of the Respondents jointly and severally. (Aa59).

More specifically, the Commissioner held that the Department had proved that Mania violated N.J.S.A. 17:22A-40(a)(2), (6) and (7), as well as subsections (8) and (16), and therefore Mania was responsible for an administrative penalty in the amount of $5,000 for his violations in Count Two of the OTSC. Ibid.

The Commissioner also adopted the ALJ's determination that the Department proved that all Respondents violated N.J.S.A. 17:22A-40(a)(2), (4), (6), (7), (8) and (16) for the activity described in Count Three of the OTSC, and ordered them jointly and severally liable for a $10,000 administrative penalty. Ibid. Respondents were also ordered jointly and severally liable for $1,612.50 in costs of the investigation. Ibid.

These multiple findings of violations of the insurance laws, including fraud, categorically disqualify Mania from holding a producer license. Insurance producers must be trustworthy and Mania has shown that he is not trustworthy. In this case, revocation of Mania's insurance producer license is necessary to protect the public from further dishonest behavior. No exceptional, extraordinary, or rare mitigating factors exist that justify allowing Mania to keep

his insurance producer license. Therefore, the Commissioner reasonably ordered the revocation of Mania's producer license.

In assessing the penalties, the Commissioner appropriately applied the seven factors articulated in Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123, 137-139 (1987). Under Kimmelman, agencies assessing civil penalties must consider: (1) the good or bad faith of the actor; (2) the ability to pay; (3) the amount of profits obtained from the illegal activity; (4) the injury to the public; (5) the duration of the illegal activity; (6) the existence of criminal actions or treble damages; and (7) any past violations. Ibid. No one factor is dispositive for or against fines and penalties. Id. at 139.

Further, although the factors in Kimmelman were used to calculate the monetary penalty, the same factors can generally be used to determine the licensure penalty as well. Thus, to avoid repetition, the Department will analyze the Kimmelman factors once and apply them to the monetary penalty and the license penalty.

The Commissioner's penalty assessment under the Producer Act is supported by his analysis of the Kimmelman factors, including the bad faith of Mania. This first factor involves the egregiousness of the conduct and whether Mania could have reasonably believed his conduct was legal. Kimmelman, 108 N.J. at 137. Mania argues that his "good faith was shown by his efforts to

cooperate immediately with the federal investigation and agreement to make such large civil payments and penalties and forfeitures." (Ab23). However, this argument is disingenuous because Mania himself explained that his "hope and belief" was that he "might not be prosecuted at all if [he] worked with [the federal authorities] in an undercover capacity." (Aa469). Furthermore, the "large civil payments" already made by Mania simply amounted to him repaying the money that he stole from MOBOE. Thus, applying the first factor, the Commissioner found that Mania acted in bad faith "when he approved the increased commissions and used his official position to intercept and conceal disclosures which would have alerted the MOTSD that it was paying a higher commission rate. This factor weighs in favor of a higher penalty as to [Mania]." (Aa54).

On the second factor, ability to pay, Mania provided no proof that he was unable to pay the monetary penalty here. (Aa55). Mania claims that he was "unable to practice his profession and earn a living with his insurance license from April 2016 forward." (Ab22). But as the ALJ noted, Mania "did not provide evidence of [his] finances and of [his] expenses." (Aa55). Mania had his opportunity to present evidence of inability to pay to the ALJ and failed to do so. The Commissioner reasonably found this factor to be neutral. Ibid.

The third factor concerns the amount of profits obtained from 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, 108 N.J. at 138. The Commissioner noted that Mania, along with his company RHM, received commission checks totaling $141,527, but found that "[a]lthough the record is unclear regarding the actual profit [Mania] obtained, they all benefitted financially from the scheme." (Aa55). Therefore, it was reasonable for the Commissioner to find that this factor weighs in favor of a higher penalty. Ibid.

Under the fourth Kimmelman factor, the Commissioner considered the injury to the public from Mania's actions. (Aa55-56). The Commissioner found, among other things that, "the need to maintain public faith in insurance producers weighs in favor of penalizing [Mania]." (Aa0056a). This favor "weighs in favor of a higher administrative penalty." Ibid. Although Mania continues to minimize role and emphasize his perceived harm (Ab at 23), the Commissioner already took all of these facts into account when he found that "this ignores that [Mania] used his elected position to hide the inflated commissions that he and the other Respondents were benefitting financially from." (Aa0056a). Therefore, the Commissioner appropriately found that this factor weighed in favor of a higher penalty. Ibid.

The fifth Kimmelman factor to be examined is the duration of the illegal activity. Under Kimmelman, greater penalties are necessary to incentivize wrongdoers to cease their illegal conduct. Kimmelman, 108 N.J. at 139. The longer the illegal conduct, the more significant civil penalties should be assessed. Ibid. The Commissioner found that Mania "participated in a scheme to overcharge commissions on policies from June 2007 to June 2009, for two years." (Aa56). The Commissioner appropriately weighted this factor against Mania. Ibid.

Under the sixth factor, the agency examines whether there are criminal or treble damages actions. "A large civil penalty may be unduly punitive if other sanctions have been imposed for the same violation . . . ." Kimmelman, 108 N.J. at 139. Mania contends that this factor should not be weighed against him because he was imprisoned for three months and ordered to pay restitution. (Ab22). The Commissioner agreed that this factor "mitigates against a higher penalty as to [Mania]." (Aa57). Thus, the Commissioner did not impose a large penalty against Mania.

Finally, the agency must consider previous violations of the statute and regulations. The Commissioner found that Mania and RHM entered into Consent Order No. E14-53 on May 5, 2014, in which they admitted to violations of the Producer Act by permitting an unlicensed employee of RHM to conduct

business in New Jersey. (Aa57). Thus, the Commissioner appropriately determined that this factor weighed in favor of a higher penalty as to Mania [and RHM]. Ibid.

After weighing the evidence against the Kimmelman factors, the Commissioner assessed civil penalties against Mania that are far below the maximum permitted. (Aa59-60). A review of the record shows that these penalties are warranted, not excessive or unduly punitive, and are necessary to demonstrate the appropriate level of opprobrium for such egregious and extended conduct by an insurance producer. Ibid. Accordingly, the Commissioner's Final Order revoking Mania's producer license and assessing penalties under the Producer Act should be upheld as within his statutory authority and discretion.

A. The Commissioner's Finding that the Rehabilitated Convicted Offenders Act Does Not Bar Revocation of Mania's Insurance Producer License is Supported By the Law (Addressing Points Five and Seven (Subparts 7 and 10) of Mania's Brief)

Mania argues that the revocation of his insurance producer license is prohibited by the Rehabilitated Convicted Offender Act ("RCOA"), N.J.S.A. 2A:168A-1 to -16, because Mania believed that he was rehabilitated, and the Department presented no evidence to rebut that. (Ab29-36). However, the Commissioner correctly found that the RCOA is inapplicable here because it only applies to an application for a license, not the revocation of an existing

license. (Aa50); N.J.S.A. 2A:168A-2 (no licensing authority is "authorized to pass upon the qualifications of any applicant for a license . . . on the grounds that the applicant has been convicted of a crime" unless N.J.S.A. 2C:51-2 is applicable or if a conviction for a crime relates adversely to the profession or business). Because this proceeding concerned only the revocation of Mania's insurance producer license, not an application for a license, the RCOA is inapplicable. Mania's contention that the Commissioner "has agreed that the [RCOA] applied to this OTSC action to revoke [his] license" is simply inaccurate and unsupported by the record. (Ab29; see also Aa50).

CONCLUSION

For these reasons, the Commissioner's decision should be affirmed.

Respectfully submitted,

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Date: July 16, 2025

JUSTIN ZIMMERMAN, ACTING COMMISSIONER, Petitioner/Appellee, v. ROBERT W. MANIA, HEIDI ANN MANIA, and RHM BENEFITS, INC., Respondents/Appellants.	SUPERIOR COURTOF NEW JERSEY APPELLATE DIVISION DOCKET NO: A-003346-23 OAL DKT. NO.: BKI 03589-22S AGENCY DOCKET NO. E22-30 Administrative Action ON APPEAL FROM: The DECISION AND ORDER of the Acting Commissioner of the Department of Insurance dated May 22,2024 Sat Below: Justin Zimmerman the Acting Commissioner of Insurance on April 8, 2024 **ORAL ARGUMENT REQUESTED**

APPELLANT ROBERT W. MANIA'S REPLY BRIEF

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PRELIMINARY STATEMENT

The Acting Commissioner (the "Commissioner") of the Department of Banking and Insurance ("the Division") erred when he found that there was no evidence presented by Robert Mania ("Rob") to create a genuine issue of fact as to Counts 2 and 3 of the Order to Show Cause ("OTSC") or the Rehabilitated Offenders Act ("ROA").

The statute governing this OTSC, N.J.S.A. 45:1-25.5, was not cited by the Division anywhere in its Briefs to the ALJ below or to the Commissioner. From the outset the Division sought to **revoke** Rob's insurance license, but Rob had no license to revoke after the Commissioner refused to renew it in October 2017.[1] For the first time, near the end of his Opinion, the Commissioner takes notice that N.J.S.A. 45:1-25.5 controls this action. That statute governs an action for "disqualification" of an individual from obtaining or holding a license after being convicted of certain offenses. Under the statute, four factors must be evaluated: (factor 1) the seriousness of the offense and whether significant time has passed since the events; (factors 2

[1] The Commissioner found based on the Division's claims that the ROA did not apply to Rob because this was an action to revoke his license and that the ROA does not apply to revocation actions. (50a). Rob applied to renew his license this past year and was rejected without a hearing and opportunity to demonstrate his rehabilitated status. The Division suggested Rob was not eligible because he had not completed his probation at RBr 31. That was incorrect. Supplemental Appendix ("SA") at 1-3sa

and 4) the relationship of the offense to the industry with a focus on preventing impairment of the public's confidence in the integrity of licensees; and (factor 3) if the offender has not been rehabilitated in the intervening time.

The Commissioner only evaluated the four factors with an after the fact review of the summary judgement decision by the ALJ based on a record with no testimony and no credibility findings. The Commissioner's Opinion cites many countervailing facts and arguments raised by Rob, all of which bear on the four factors set forth in N.J.S.A. 45:1-21.5. The first and most important factor is the nature and seriousness of the crime and the passage of time since its commission. (Opinion at 51a). The Commissioner summarily decided that factor weighed heavily in favor of disqualification "because of the seriousness of the offense and proximity of time." That finding is seriously contested and dramatically disproved both by the Commissioner's holding that the regulation that might have applied was purposefully not adopted so the significance of the regulatory violation was questionable. Additionally, there was no proximity in time since over 15 years had passed by the time the Commissioner wrote his opinion and the pertinent events had occurred from September 2007 to June 2009.

New Jersey favors the rehabilitation of criminal offenders after a few years as set forth in the ROA which applies to all convicted in New Jersey. Therefore, the Division's claim that it was inapplicable to this action because it was a revocation

proceeding is just wrong. Years have passed since the offending conduct and the OTSC based thereon and over 8 years have passed since the conviction in April 2017. As the Commissioner noted, N.J.S.A. 45:1-21.5, adopted in 2021, controlled this OAL proceeding. That statute was designed in part to make sure that offenders whose crimes were attenuated were not to be deprived of their property rights to a license to practice their chosen profession, particularly if they had been rehabilitated. N.J.S.A. 45:1-21.5(3)

The statute requires that the offense be analyzed as to its "nature and seriousness" and that the "passage of time" must also be considered. In this case Rob's rehabilitation began immediately by cooperating with the FBI to root our criminality in the insurance industry in New Jersey. (51a-52a; 417a et seq; 529a-36a par 15) No specific regulatory provision was violated by the non-disclosure of the increase in commission by the broker of record to MOBE the insured by Cotroneo, who had raised the insurance commission it was charging the insurer, Cigna, by 1%. Rob did not raise the cost of the Commission. The Insurance Commission's rejection of a the regulatory notification requirement should have weighed heavily in the evaluation of factors 1, 2, and 4 under N.J.S.A. 45:1-21.5(a)(1). The Commissioner agreed that 3 the rehabilitation factor weighed in Rob's favor.[2] While the arguably

[2] If the ROA had been deemed to be applicable, as it should have been, this finding by the Commissioner proves that Rob was entitled to be deemed rehabilitated under the ROA and immediately eligible for a license when he applied again in 2025 and now. SA at 1-3sa

technical nature of the violation of "honest practices" should have been used to minimize the importance of the alleged misconduct that occurred more than 15 years ago. Rob deserved summary judgement in his favor, not the Division.

COUNTER STATEMENT OF THE PERTINENT FACTS

This was a highly contested case with countervailing exhibits and affidavits from both sides. The Commissioner found there was no violation proved against Rob as to Counts 1 and 4 and granted summary judgement and dismissed those counts. (32-33a; 47a). For the reasons set forth herein and in prior briefing, Count 2 in its entirety and Count 3 should have been dismissed as well.

The Division misrepresents that there were overcharges and fraudulent overstatements of insurance of more than $400,000 to the Mount Olive Board of Education ("MOBE"). Db1. As the Commissioner found in his Opinion, there were not. Commissions were paid to the Broker of Record (Frank Cotroneo) in an amount set by Cotroneo and agreed to by his insurance company client, Cigna. The MOBE was not charged a single penny more than the proper insurance premium which the insurance company charged. The insurance company then paid the agreed commission to the broker of record out of that premium. Rob was not the Broker of Record for MOBE. Rob served as a voluntary member of the MOBE and recused himself from any insurance matters before the MOBE after disclosing his potential conflict of interest.(547a-48a) Rob's conviction was based on his participation in the

failure to disclose to the MOBE that there had been a 1% increase in the commission charged by Cotroneo (not Rob) to the insurer Cigna. Obviously, the insurer who paid the commission was aware of and consented to the increase in commission.

The Department had proposed but never adopted an insurance regulation in the 2008-09 period that would have required the disclosure of the amount of the insurance commission charged by a Broker of Record to his insured. However, that regulation was rejected and not adopted in those years. (18a fn. 5) Therefore, the failure to disclose Cotroneo and Rob to the MOBE was arguably not an insurance regulatory violation even though the non-disclosure played a role in Rob's prosecution for the prosecutor defined fraud allegations.

The Commissioner found that Rob's participation in concealing the annual disclosure of the percentage of commissions paid to specific brokers by the insurer was a "dishonest practice" even though the disclosure was not a specific regulatory requirement. (18a fn5)All other parts of Count 2 were rejected by the Commissioner because Rob did notify the Division within 30 days of his conviction and because there was no need for Rob to pursue a waiver from the Commissioner to conduct insurance business because Rob was no longer conducting insurance business in 2017.

In August of 2017, Rob filed to renew his insurance license with the Division. The Division acted against Rob by denying the renewal of his license in September

2017. That regulatory punishment left Rob unable to support his family and made it difficult for him to pay the hundreds of thousands of dollars in fines and taxes he owed (on the liquidation of his IRA, undertaken to pay the penalties asserted against him). To pay his debts, Rob was forced to earn money by performing manual labor and taking multiple low salaried jobs. He had stopped working in his chosen profession in 2016 when his prosecution was publicized and he reported to jail to serve his 3-month sentence in July 2017. As the Commissioner found, Rob did not conduct insurance business and was precluded by those circumstances from working as an insurance producer. (38a). A professional license is an important piece of private property and its deprivation is not to be taken lightly. The Opinion and Order disqualifying Rob from an insurance license for 5 additional years was entered on May 29, 2024 and therefore extended the period of disqualification imposed by the Division to a total of 12 years which stands in stark contrast to the 5 years permitted for an initial revocation imposed after a full hearing and evaluation of the evidence and credibility of the witnesses, which never occurred herein. (8a;36a).

As to Count 3, the Commissioner found that the details of Rob's actions, as admitted in the guilty plea, amounted to Cotroneo raising the total commissions paid from 4% to 5% and Rob aiding in the non disclosure to MOBE. While labeling that increase as inflated, the Commissioner ignored that Cotroneo and his agency had the right to increase the commissions so long as the insurer (Cigna) was willing to pay

the bill, which it was. Cotroneo had defrauded Rob for a period of years before these events and Cotroneo agreed to repay his debt to Rob through this set of transactions. That debt was unmentioned by the Commissioner although it is a significant factor in understanding Rob's lack intent to join in Cotroneo's schemes.

POINT I
THE SUMMARY JUDGEMENT RULING HEREIN REQUIRES THAT " NO GENUINE ISSUES" OF FACT EXIST

Rob's professional license to earn a living as an insurance broker and producer was not revoked based on a "beyond a reasonable doubt" or a "clear and convincing evidence" standard, which is the standard applicable at evidentiary hearings for lawyers' licensure..In re Pennica, 36 N.J. 401, 419 (1962. In the Matter of E. Lorraine Harris,182 N.J. 594, 595 (2005). Nor was it even demonstrated at a hearing by a preponderance of the evidence that Rob had violated N.J.S.A. 45:1-21.5(a)(1) or that he had **not** been rehabilitated during the 15 years that passed since the offending conduct. Instead, Rob had no evidentiary hearing at all on any of the issues in this case. Likewise, no credibility determinations were made because no live testimony was taken.

The Commissioner comes before this Court arguing that he is entitled to an affirmance because there was "credible evidence" to revoke Rob's license. (Rbr. 36;13-17 But see 8a and 42a) This proffer gives no consideration to the answering certifications of Rob and his witnesses which included a member of the MOBE who

certified that Rob had recused himself from all insurance matters due to his financial connection with Cotroneo, the Broker of Record for the MOBE (417aet seq;529aet seq. 547a-48a)Nor to the proffers of facts disclosed in the Interrogatory answers detailing facts Rob offered to prove, which were filed as Exhibits. (400a -416a)The Division offered **no** evidence to show that Rob was not lawfully owed the money received from Cotroneo or that Cotroneo, not Rob, lawfully raised the commission with the consent of Cigna, who willingly paid the increased commission. The statute governing this proceeding, N.J.S.A. 45:1-21.5, requires a weighing of the evidence discussed above, including the seriousness of the underlying offense, in this case an allegation of non-disclosure, which is barely adequate grounds to satisfy the proffer for this type of prosecutor defined fraud that federal law permits, and a weighing of a prospective licensee's rehabilitation if he committed a crime in his past. None of that was done in this case. The Commissioner also did not weigh the evidence offered in light of the lapse of time since the underlying conduct occurred now 16-18 years ago and/or the date of the charge and conviction which are now 8 and 7 years ago respectively.

The evidence underlying the conviction was so nominal as to be de minimus. The evidence barely proved a regulatory violation because the requirement to notify the insured, which failure was the basis for the prosecutor defined crime of

participating in a fraud designed by Cotroneo, was rejected as a regulation (18a fn5). That rejection reaffirmed the practice as it existed in the industry.

Mania had recused himself from all insurance matters handled by Cotroneo with MOBE. because Cotroneo owed Rob a large debt (547a-48a) That was uncontested, but it was not weighed by the Commissioner when he analyzed NJSA 45:1-21.5(a)(2). (400a-16a;417a-22a;529a-36a)

Counsel for the Division repeatedly puts words in the Commissioner's mouth by stating that the Commissioner held that Mania "misappropriated commissions by fraud" [RBr at 17] That portrayal is blatantly wrong. Nowhere did the Commissioner make those findings. Nowhere did he find that Rob "misappropriated" anything. (1a-55a). The word "inflated" was used by the Commissioner, but it means no more than that the commission was increased by 1% by Cotroneo, not Rob. The increase was not a crime, because the payor Cigna consented to pay the increased commission to get the business from Cotroneo and his firm.

POINT II
THE CLAIMS AGAINST ROB SHOULD BE BARRED BY THE STATUTE OF LIMITATIONS AND LACHES

A. The Statute of Limitations

Rob's criminal information was publicly filed and reported in the press in April 2016 when counsel for Rob and the Division first corresponded about settling

regulatory penalties. (See 409a to 456a; 487a to 574a). On April 25, 2017, Rob was convicted, and a formal notification was sent to the Division by his counsel.

In April 2017, the New Jersey Attorney General's Office filed an OTSC against Rob based on his conviction to remove his pension and bar him from public office among other relief. If that branch of the State Government could file for relief, the Division, whose counsel was part of the Attorney General's Office, could have filed for relief at the same point in time. On October 18, 2017, the Division denied Rob the right to renew his license based on its knowledge of criminal information in April 2016 and his conviction and sentencing in April 2017.

The Division has cited no case where an extension of the generous ten-year statute of limitations was granted to the State. More importantly, when the party needing the extension has adequate time to file their cause of action after discovering it, they are required to file the action within the applicable statute of limitations. In Burd v. New Jersey Telephone Company, 76 N. J. 284, 291-92 (1978) the Supreme Court held that no leading cases suggest that accrual of a cause of action is postponed until plaintiffs learn that the law permits redress if they knew or reasonably should have known the relevant facts. Judge Clifford's concurring opinion in Burd clarified the doctrine in words directly applicable herein:

> **There remained eleven months during which suit could have been filed before the expiration of two years from the accident date, more than ample time for the expeditious filing of a complaint.**

> Plaintiff having failed to institute suit in that time, I would hold his claim barred by the statute of limitations …
>
> Id. at 294. (*Clifford, Con.*) (emphasis added)

Justices Clifford and Conford should be followed here. The Commissioner simply assumed an extension applied although **no** special circumstances were offered to justify providing the extension to an already long, ten years, statute of limitations. In Presslaf v. Bernard Robins et al., 168 N.J. Super 543, 546-547 (App. Div. 1979), the Court emphasized that the extension of a statute of limitations for a late discovery is rarely granted and therefore the Court denied it.

The burden of proof to justify an extension falls on the party seeking the extension. Neither the Commissioner nor the Division provide any persuasive facts to justify a further extraordinary extension of the already generous statute of limitations. Therefore, the ten year statute of limitation was applicable.

B. Laches Bars Both Counts 2 and 3 of the Order to Show Cause

The Division argues that the laches is an equitable doctrine and not applicable. This OTSC action is styled as an equitable action to revoke a license. Thus, this equitable doctrine applies to their action.

The Division also claims there is no prejudice to Rob by its lackadaisical approach to the extraordinary penalties it sought. This claim is demonstrably false as Rob suffered incredible prejudice as a result of the delays. He was not able to earn

a living in his chosen profession using the extensive knowledge, experience, and connections he had acquired over many years. That harm to him and his family is more than enough prejudice to justify the application of the doctrine of laches to this OTSC filed 15 years after the underlying events and 6 years after the Division had full knowledge of the facts.[3]

POINT III
THE ENTIRE CONTROVERSY DOCTRINE BARS THIS CASE

The Attorney General's lawyers brought a case based on identical facts in New Jersey Superior court years before they filed the OTSC to punish the same defendant again on the identical set of facts. This case is now in the Appellate Division, which is the only court that could hear appeals from both cases. The Division argues that only the Commissioner is authorized to revoke an insurance producer's license; therefore, the cases, no matter if they are identical or not, must proceed separately.

This case is not a revocation case. This case is governed by and brought pursuant to N.J.S.A. 45:1-21.5. Had the Commissioner acted promptly, the cases could have been consolidated. A defendant's right to litigate identical actions in one forum at one time should override the Commissioner's right to a hometown forum.

[3] Other lawyers in the same New Jersey Attorney General's Office filed a similar suit based on the same facts in Superior Court to penalize this same defendant in other ways. Why should laches not bar the seemingly intentional delay, until 6 years after Rob's lawyers had attempted to negotiate a fair penalty with the Division in May of 2017 (378a).

Hackensack v. Winner, 82 N.J. 1, 38 (1980). The defendant may have had to waive certain rights to an ALJ and Commission held proceedings to achieve consolidation or the right to a trial in Superior court, but that is a choice that should have been presented to the defendant in order to merge the cases. Since the AG's office chose to pursue the initial case without raising the claims later raised in the OTSC, the OTSC should be barred pursuant to the entire controversy doctrine.

POINT IV
THE KIMMELMAN DOCTRINE DOES NOT SUPPORT EXTENDING THE REVOCATION PERIOD OF ROB'S LICENSE

Pursuant to Kimmelman v. Henkels & McCoy, Inv., 108 N.J. 123, 137-39 (1987), there are seven factors to be weighed to determine if further penalties, including the further revocation of a license, are to be implemented against a defendant. For the reasons set forth below, none of the Factors weigh in favor of extending the revocation of Rob's license past the initial 7 year period. In this matter, there was no injury to the public by Rob's acts, as found by the ALJ and the Commissioner, and no profits to the Manias. (187a). Rob was never shown to have approved, voted for, or sought the increased commissions charged to Cigna by Cotroneo, as claimed by the Division [RBr 40]. Instead, the record is clear, as the Commissioner found, that Rob recused himself from all insurance decisions by the MOBE. (30a) The MOBE was not a financial victim because it was not charged any of the increased commission. The ALJ suggested that perhaps Cigna was a financial

victim because it paid the 1% increase in commission, but Cigna had agreed to pay the increased commission and Cigna itself sent a notification to others of the increased commission. (87a). Moreover, as the ALJ found, the injury to the public was, if anything at all, "minimal" [87a] and the penalty payments by Rob were extreme causing a loss to him of over $600,000 including tax penalties. Rob was admittedly harmed because he had to liquidate his 401K which caused him to incur a tax penalty (471a) and the Manias had to sell their home, and Rob had to work as a mechanic to pay the $400,000+ to satisfy the terms of the Judgement . (583a;471a)

(Factor 1) Mania's good faith was demonstrated by his efforts to cooperate immediately with the federal investigation and his agreement to pay such large civil penalties and forfeitures. As to Factor 2, Rob's efforts to repay show that he did all he could financially to make amends and that he exhausted his financial capacity to do so. As to factor 3, Mania made little and paid hugely to make amends. As the ALJ found, there was little to no profit for Rob. As to factor 4, the ALJ and the Acting Commissioner commented upon the lack of financial harm to the public from Rob's acts. (87a). As to factor 5, the alleged cover-up at the heart of the criminal charge only lasted from September 2007 to June 2009, (E.g. 87a; 583a; 47a). As to factor 6, not only were there criminal repercussions available they were pursued, and Rob paid an excessive monetary penalty and served a prison term which clearly weighs

in his favor. As to factor 7, there was one prior minor regulatory infraction of failing to adequately supervise an employee. (30a).

A fair analysis shows that no Kimmelman factors favor imposing an enhanced period of time without an insurance license on Rob after the additional term of 7 years from October 2017, when the Commission first denied Rob a license until May 22, 2024, when the Commissioner added 5 more years to that 7 year period.

POINT V
THE ROA IS APPLICABLE TO ROB MANIA AS IT IS TO ALL OFFENDERS AND ALSO PURSUANT TO NJSA 45;1-25.5

N.J.S.A. 45:1-21.5 was designed to limit the Division's discretion and to require that the ROA, (as to rehabilitation and time passed,) be evaluated before a decision is made to deny such an important right as a license to earn a living for approximately 12 years. That statute also requires weighing the ROA factors.

CONCLUSION

For the foregoing reasons, Rob Mania's Insurance and Producer's License should be immediately reinstated and summary judgement granted to him.

Respectfully submitted,

James A. Plaisted

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