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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0794-21

MARLENE CARIDE,
COMMISSIONER OF THE
NEW JERSEY DEPARTMENT
OF BANKING AND INSURANCE,

Plaintiff-Respondent,

v.

MACAULAY G. WILLIAMS,

Defendant-Appellant.

Argued December 13, 2022 – Decided March 23, 2023

Before Judges Sumners and Fisher.

On appeal from the Superior Court of New Jersey,
Law Division, Middlesex County, Docket No. DC-
014313-19.

David A. Gies argued the cause for appellant (David
A. Gies, Esquire, PA, attorney; David A. Gies, on the
briefs).

Ashleigh B. Shelton, Deputy Attorney General, argued
the cause for respondent (Matthew J. Platkin, Attorney
General, attorney; Melissa H. Raksa, Assistant

Attorney General, of counsel; Ashleigh B. Shelton, on the brief).

PER CURIAM

The Commissioner of the New Jersey Department of Banking and Insurance (Commissioner) filed a civil complaint, alleging Macaulay G. Williams violated the New Jersey Insurance Fraud Prevention Act (IFPA), N.J.S.A. 17:33A-1 to -34, by filing a fraudulent insurance claim with his homeowner's insurance carrier for alternate living expenses he did not incur. Summary judgment in the amount of \$38,472, inclusive of \$8,000 in administrative sanctions and penalties and \$32,472 in attorneys' fees and costs, was granted in favor of the Commissioner. Williams appeals, arguing he did not file a fraudulent claim because he was, in fact, liable for the expenses he claimed. He thus contends the court erred in awarding attorneys' fees substantially more than the administrative sanctions and penalties. He further appeals the denial of his motion for reconsideration of the summary judgment order. We affirm the orders granting the Commissioner's summary judgment motion and the award of sanctions, but reverse and remand the award of attorneys' fees for the court to explain its reasons for the amount awarded.

Williams was insured by Liberty Mutual Insurance Company, covering his South River residence. The policy stated he was entitled to up to a year of

alternate living expenses if his home was damaged under a coverable loss and he had to reside elsewhere. Such a situation arose in April 2013, when Williams' residence suffered water damage and he temporarily moved in with his then-girlfriend, Shamala Grant. Williams submitted an insurance claim for property damage due to water and mold. After Liberty Mutual paid him for the physical damage to his residence, Williams made a claim for alternate living expenses, seeking reimbursement in the amount of \$1,500 per day for twenty-one days—a total of \$31,500.

Williams was subsequently indicted for third-degree insurance fraud, N.J.S.A. 2C:21-4(a) and (b), and third-degree attempted theft, N.J.S.A. 2C:5-1 and N.J.S.A. 2C:20-4, for making false statements on an insurance claim. Tried before a jury, he was convicted of third-degree insurance fraud and third-degree theft by deception and sentenced to concurrent one-year terms of probation. We affirmed his conviction. State v. Williams, No. A-0462-18 (App. Div. July 22, 2021) (slip op. at 12).

Over a year after his conviction, the Commissioner filed a civil complaint against Williams for violating the IFPA. Williams denied the civil allegations even though they mirrored the offenses for which he was convicted.

When discovery concluded, the Commissioner moved for summary judgment, seeking surcharge, civil penalty, court costs, and attorneys' fees. The summary judgment record revealed that, to show proof of his living expenses with Grant, Williams emailed Liberty Mutual copies of two checks from his personal checking account, payable to Grant for the rent she purportedly charged him and totaling \$16,450. These checks were never cashed. When the two checks were written, Williams lacked sufficient funds for the checks to clear. When Liberty Mutual sought to verify the veracity of Williams' claim, he failed to appear for three examinations under oath. Thus, Liberty Mutual denied his reimbursement claim for alternate living expenses.

In granting summary judgment, the trial court did not issue a written or oral decision. However, in its order, the court wrote Williams "provid[ed] false checks to Liberty Mutual in support of his claim that he paid his fiancé \$16,450 in alternate living expenses when in fact, he did not." The court stated "these expenses were never incurred" because "the checks were never cashed." It reasoned, "[t]he submission of uncashed checks to Liberty Mutual as proof of expenses is a transparent attempt at deception and no rational factfinder could conclude otherwise." Williams was ordered to pay the Commissioner \$6,000: \$1,000 surcharge, N.J.S.A. 17:33A-5.1, and \$5,000

civil penalty for a single violation of the IFPA, N.J.S.A. 17:33A-4(a)(1). Furthermore, in reliance on Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987), the court found the Commissioner was entitled to an award of \$32,472 in attorneys' fees and costs, N.J.S.A. 17:33A-5(b). This award was approximately \$5,000 less than requested by the Commissioner. The court stated it lowered the fees "to eliminate charges that were insufficiently documented or involved conferences between attorneys assigned to work on [the Commissioner's] file."

The court denied Williams' subsequent motion for reconsideration

for the following reasons: 1) as indicated by fact that the "opposed" line was checked on the second page of the [o]rder of September 20, 2021, the opposition of [d]efendant's counsel was considered by the [c]ourt and the stamp on the first page of the [o]rder was a clerical error; 2) none of the arguments offered by [d]efendant's counsel obscures the fact that if the expenses claimed by the [d]efendant were actually incurred, the checks payable to the [d]efendant's girlfriend that were submitted to the insurance carrier as proof of expenses, would have been cashed; and 3) the thin tissue of sophistry offered in support of this motion cannot conceal the deceptive and fraudulent conduct of the [d]efendant.

In his appeal, Williams contends that he issued the checks to Grant and, therefore, did not violate the IFPA because he incurred expenses. He also argues the attorneys' fees awarded by the trial court are so disproportionate to

the surcharge and sanction that the judgment should be vacated, and the matter should be remanded.

We review a grant of summary judgment using the same standard that governs the motion judge's decision. RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018) (citing Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-29 (1995). "When no issue of fact exists, and only a question of law remains, this [c]ourt affords no special deference to the legal determinations of the [motion judge]." RSI Bank, 234 N.J. at 472 (quoting Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co., 224 N.J. 189, 199 (2016)).

Summary judgment was proper based on Williams' related criminal convictions and his lack of proof that he incurred any alternate living expenses. As the Commissioner argued in the trial court, Williams was criminally convicted on the same issues. Collateral estoppel prohibits Williams "from re-litigating matters or facts which the party actually litigated and which were determined in a prior

action, involving a different claim or cause of action, and which were directly in issue between the parties." In re Adoption of Amendments to N.J.A.C. 11:22-1.1, 459 N.J. Super. 32, 38 (App. Div. 2019) (quotations omitted). Williams argues he did not commit insurance fraud, but there is no merit to the argument given his criminal conviction.

Furthermore, Williams' two uncashed checks totaling \$16,450, payable to Grant, drawn on his personal checking account with insufficient funds to cover the checks, demonstrate he had no obligation nor an intent to pay for any living expenses for living with Grant. The checks were essentially worthless in proving he was liable to Grant. Moreover, Williams offered no agreement or certification from Grant in opposition to Liberty Mutual's summary judgment motion evidencing his obligation to share living expenses with her. Simply put, there is no evidence Williams incurred the expenses he sought from Liberty Mutual. Thus, we discern no genuine issue of material fact or issue of law to upset the trial court's summary judgment order regarding the \$1,000 surcharge and \$5,000 civil penalty.

We do, however, have a concern with respect to the court's summary judgment regarding attorneys' fees. The Commissioner is entitled to reasonable attorneys' fees under N.J.S.A. 17:33A-5(b), which mandates the award of court costs and "reasonable" attorneys' fees to the Commissioner if an individual is

found liable for violating the IFPA. The award of attorneys' fees is "a separate expense that the statute actually mandates the courts to award in the event of a violation." State v. Nasir, 355 N.J. Super. 96, 108 (App. Div. 2002). Since Williams was correctly found to have violated the IFPA, the trial court had the right to award reasonable attorneys' fees.

An award of attorneys' fees is generally left to the sound discretion of the trial court. Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 443–44 (2001); Rendine v. Pantzer, 141 N.J. 292, 317 (1995). That said, a trial court must assess the reasonableness of the attorneys' hourly rate and the time expended. See Rendine, 141 N.J. at 335.

In this case, we are constrained to vacate the attorneys' fees award and remand to the trial court to provide its factual reasons and conclusions of law supporting an award of attorneys' fees to the Commissioner. The court did not "analyze the [relevant] factors in determining an award of reasonable [attorneys'] fees and then . . . state its reasons on the record for awarding a particular fee." R.M. v. Supreme Court of N.J., 190 N.J. 1, 12 (2007) (alteration in original) (quoting Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 21 (2004)). See also R. 1:7-4(a) ("The court shall, by an opinion or memorandum decision, either written or oral, find the facts and state [his or her] conclusions

of law thereon in all actions tried without a jury"). The court's mere conclusory comment that it reduced the amount requested by the Commissioner "to eliminate charges that were insufficiently documented or involved conferences between attorneys assigned" is insufficient. The court must articulate a more robust analysis, for example, the reasonableness of the hourly rate charged and the time expended, as well as the legal basis for its award.

Any arguments by Williams not addressed is because they are without sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed in part; vacated and remanded in part. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION