SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2371-21

JUSTIN ZIMMERMAN,
ACTING COMMISSIONER,
NEW JERSEY DEPARTMENT
OF BANKING AND INSURANCE,

Petitioner-Respondent,

v.

GENEVIEVE STEWARD,
BAIL GROUP MANAGEMENT,
LLC, and EAST COAST BAIL
BONDS, LLC,

Respondents,

and

JAMES MASCOLA,

Respondent-Appellant.

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Submitted March 28, 2023 – Decided August 9, 2023

Before Judges Messano and Gummer.

On appeal from the New Jersey Department of Banking and Insurance.

Cohen Fineman, LLC, attorneys for appellant (Samuel B. Fineman, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent (Sookie Bae-Park, Assistant Attorney General, of counsel; Jeffrey S. Posta, Deputy Attorney General, on the brief).

PER CURIAM

Respondent James Mascola appeals from a February 24, 2022 final decision and order of the Commissioner of the Department of Banking and Insurance (the Department). The Commissioner adopted with minor modifications the June 25, 2021 initial decision of an administrative law judge (ALJ), thereby granting the Department's motion for summary decision, revoking Mascola's insurance producer license, and imposing monetary penalties for violating the New Jersey Insurance Producer Licensing Act of 2001 (IPLA), N.J.S.A. 17:22A-26 to -57, and related regulations. Because the decision was not arbitrary, capricious, or unreasonable, we affirm.

I.

The following facts are derived from the record on appeal. Mascola was a licensed insurance producer in New Jersey, pursuant to N.J.S.A. 17:22A-32(a). Respondent Genevieve Steward was an insurance producer in New Jersey until her license expired on June 30, 2014. In 2005, Mascola and Steward formed

respondent Bail Group Management, LLC (BGM), a limited liability company in New Jersey. Steward was the managing member and Mascola was a member of BGM. BGM was never licensed as a business entity insurance producer in New Jersey.

On December 28, 2006, Mascola and Steward formed respondent East Coast Bail Bonds, LLC (ECBB), a business entity insurance producer licensed in New Jersey pursuant to N.J.S.A. 17:22A-32(b). Mascola and Steward each held a fifty-percent ownership interest in ECBB. ECBB acted as a sub-producer for BGM. ECBB's license was cancelled on August 26, 2014, because it no longer had a designated licensed producer. Steward was the designated responsible licensed producer for ECBB until her license expired. We refer to Mascola, Steward, BGM, and ECBB collectively as "respondents."

On February 7, 2018, the Department issued a six-count order to show cause (OTSC) against respondents, seeking to revoke the licenses of Mascola, Steward, and ECBB and impose monetary penalties for conduct violating the IPLA and related regulations. In count one, the Department alleged respondents had failed to remit premiums to Financial Casualty & Surety Co. pursuant to a bail-bond agreement, in violation of N.J.S.A. 17:22A-40(a)(2), (8); N.J.A.C. 11:17A-1.6(c); N.J.A.C. 11:17A-4.10; and N.J.A.C. 11:17C-2.2(c). In count

two, the Department alleged respondents had failed to timely return collateral funds to consumers for the bail bonds of three individuals, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (8) and N.J.A.C. 11:17A-4.10. In count three, the Department alleged respondents had misappropriated the collateral funds for the bail bond of one of those individuals, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (8) and N.J.A.C. 11:17A-4.10. In count four, the Department alleged BGM had invoiced someone for a premium without being licensed to do so, in violation of N.J.S.A. 17:22A-29 and N.J.S.A. 17:22A-40(a)(2), (8). In count five, the Department alleged ECBB had failed to register its Wildwood office as a second branch office, in violation of N.J.S.A. 17:22A-40(a)(2), (8) and N.J.A.C. 11:17C-2.9(a). In count six, the Department alleged respondents had failed to timely reply to the Department's inquiries, in violation of N.J.S.A. 17:22A-40(a)(2), (8) and N.J.A.C. 11:17A-4.8.

In a February 26, 2018 joint letter, Mascola and Steward disputed the charges and requested a hearing. The Department transmitted the matter to the Office of Administrative Law as a contested case on October 3, 2018.

On March 6, 2020, the Department moved for summary decision on all counts of the OTSC. In support of the motion, the Department submitted the ten-page certification of a Department investigator and Exhibits A through R

attached to the certification. The Department also submitted a statement of material facts, which contained forty-five enumerated paragraphs setting forth detailed factual assertions supported by citations to the record.

In response, Mascola and Steward submitted nearly identical documents in which they made factual assertions, none of which were supported by affidavits, certifications, or citations to evidence in the record. They did not respond to the Department's statement of material facts.

The ALJ held the material facts were not in dispute. The ALJ found respondents had not disputed: "they agreed to a $750,000 judgment by their surety company in the United States District Court for $720,000 in bail bond forfeitures and $30,000 in unremitted premiums on bail bonds"; "they did not return collateral funds to consumers for bail bonds for long periods of time, and that $30,000 in collateral funds were not returned"; "Steward invoiced a consumer for a bail bond premium through BGM, without it being licensed to do so"; and "the Wildwood . . . office of ECBB was not registered as a branch office." The ALJ also found respondents had not provided "any specific facts to support their allegation that they timely and completely responded to requests for information from the Department" or "their allegations that someone else [wa]s responsible for their violations of the insurance laws and regulations."

The ALJ held respondents "remained responsible for the insurance-related conduct of their employees and agents." The ALJ concluded "there [we]re no genuine facts in dispute and that summary decision [wa]s warranted."

Based on those findings, the ALJ issued on June 25, 2021, an initial decision: granting summary decision to the Department on all counts; revoking the insurance producer licenses of Mascola, Steward, and ECBB; imposing civil penalties in the amount of $60,000 against respondents, jointly and severally; ordering restitution be paid by respondents, jointly and severally, together with prejudgment interest thereon from May 7, 2013; and requiring respondents to reimburse the Department for the costs of investigation and prosecution in the amount of $5,300. Respondents did not file any exceptions to the initial decision.

On February 24, 2022, the Commissioner issued a twenty-three-page final decision and order, adopting the ALJ's decision granting summary decision in favor of the Department on all counts and holding "the [r]espondents violated the [IPLA] and accompanying regulations as charged in the OTSC, and have failed to present any legally or factually viable defenses" to those violations. The Commissioner also adopted the ALJ's decision revoking the insurance producer licenses of Mascola, Steward, and ECBB. The Commissioner agreed

with the ALJ that a $60,000 civil penalty should be imposed on respondents but modified the allocation of that penalty across respondents and the six causes of action in the OTSC. The Commissioner agreed to order restitution but clarified to whom the restitution should be paid. The Commissioner also agreed with the ALJ's recommendation that respondents reimburse the Department for the costs of investigation and prosecution in the amount of $5,300.

On appeal, Mascola argues the Commissioner's and ALJ's findings were not supported by the weight of the evidence and faults the Commissioner and the ALJ for failing to consider his "limited and nominal role in the operation and management of BGM and ECBB's operations." Considering those arguments under the applicable standard of review, we affirm.

II.

"Our role in reviewing an agency decision 'is limited in scope.'" D.C. v. Div. of Med. Assistance & Health Servs., 464 N.J. Super. 343, 352 (App. Div. 2020) (quoting Barone v. Dep't of Human Servs., Div. of Med. Assistance & Health Servs., 210 N.J. Super. 276, 284 (App. Div. 1986)). We determine whether the entity challenging an agency decision has proven the decision was arbitrary, capricious, or unreasonable. Parsells v. Bd. of Educ., 254 N.J. 152, 162 (2023). In making that determination, we consider:

> (1) whether the agency's decision offends the State or Federal Constitution; (2) whether the agency's action violates express or implied legislative policies; (3) whether the record contains substantial evidence to support the findings on which the agency based its action; and (4) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.
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> [D.C., 464 N.J. Super. at 352-53 (quoting A.B. v. Div. of Med. Assistance & Health Servs., 407 N.J. Super. 330, 339 (App. Div. 2009)).]

We are not "bound by the agency's interpretation of a statute or its determination of a strictly legal issue." Id. at 353 (quoting R.S. v. Div. of Med. Assistance & Health Servs., 434 N.J. Super. 250, 261 (App. Div. 2014)). And "[w]e do not . . . simply rubber stamp the agency's decision." Ibid. (quoting Paff v. N.J. Dep't of Labor, 392 N.J. Super. 334, 340 (App. Div. 2007)).

The standard for summary-decision motions under N.J.A.C. 1.1-12.5 is "substantially the same as that governing a motion under Rule 4:46-2 for summary judgment in civil litigation." L.A. v. Bd. of Educ. of City of Trenton, 221 N.J. 192, 203 (2015) (quoting Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 121-22 (App. Div. 1995)). We review de novo the grant of summary decision or summary judgment, applying the same standard as the motion judge. Id. at 204; Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). That

standard requires us to "determine whether '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.'" Branch, 244 N.J. at 582 (quoting R. 4:46-2(c)). "Summary judgment should be granted . . . 'against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" Friedman v. Martinez, 242 N.J. 449, 472 (2020) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)).

"The court's function is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" Rios v. Meda Pharm., Inc., 247 N.J. 1, 13 (2021) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 510, 540 (1995)). "A dispute of material fact is 'genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.'" Gayles by Gayles v. Sky Zone Trampoline Park, 468 N.J. Super. 17, 22 (App. Div. 2021) (quoting Grande v. Saint Clare's Health Sys., 230 N.J. 1, 24 (2017)). If there is no genuine issue of material fact, "we must then decide

whether the trial court correctly interpreted the law." Dickson v. Cmty. Bus Lines, Inc., 458 N.J. Super. 522, 530 (App. Div. 2019).

A party opposing summary judgment does not create a genuine issue of fact simply by offering a sworn statement. Carroll v. N.J. Transit, 366 N.J. Super. 380, 388 (App. Div. 2004). "'[C]onclusory and self-serving assertions' in certifications without explanatory or supporting facts will not defeat a meritorious motion for summary judgment." Hoffman v. AsSeenOnTV.com, Inc., 404 N.J. Super. 415, 425-26 (App. Div. 2009) (quoting Puder v. Buechel, 183 N.J. 428, 440 (2005)). Summary judgment will not be precluded by "[b]are conclusory assertions" lacking factual support, Horizon Blue Cross Blue Shield of N.J. v. State, 425 N.J. Super. 1, 32 (App. Div. 2012), self-serving statements, Heyert v. Taddese, 431 N.J. Super. 388, 413-14 (App. Div. 2013), or disputed facts "of an insubstantial nature," Miller v. Bank of Am. Home Loan Servicing, LP, 439 N.J. Super. 540, 547 (App. Div. 2015) (quoting Brill, 142 N.J. at 523). "The [summary-judgment] opponent must 'come forward with evidence' that creates a genuine issue of material fact." Horizon, 425 N.J. Super. at 32 (quoting Brill, 142 N.J. at 529). Because respondents failed to do that, the Commissioner correctly granted the summary-decision motion.

In response to the motion, neither Mascola nor Steward submitted a certification. They did not provide or cite to any exhibits. They did not respond to the Department's statement of material facts. See R. 4:46-2(b) ("[A]ll material facts in the movant's statement which are sufficiently supported will be deemed admitted for purposes of the motion only, unless specifically disputed by citation conforming to the requirements of paragraph (a) demonstrating the existence of a genuine issue as to the fact."). None of the factual assertions they made in their opposition was supported by a citation to evidence in the record.

Mascola and Steward conceded in their opposition that they had settled the federal lawsuit involving the surety company. In the Agreed Final Judgment in that case, they "agree[d] and stipulate[d]" BGM, Mascola, and Steward "owe[d], jointly and severally" the surety company $720,000 "for bail bond forfeiture liability on bail bonds written under their general agency agreement" and $30,000 "for unremitted premium on bail bonds." In their opposition to the motion, Mascola and Steward accused another person of stealing "premium," refusing to "turn the money over," and operating the Wildwood office. But, as the ALJ found, respondents did "not provide any specific facts to support their allegations that someone else is responsible for their violations of the insurance laws and regulations."

On appeal, Mascola asserts he "was not involved in the day-to-day operations of either BGM or ECBB" and, consequently, "lacked . . . scienter." The problem with that assertion is that he did not make it in opposition to the motion and, like all of his other factual assertions, it is not supported by a sworn certification or citations to evidence in the record. See Alloco v. Ocean Beach & Bay Club, 456 N.J. Super. 124, 145 (App. Div. 2018) (applying "well-settled" principle that appellate court will not consider an issue that was not raised before the trial tribunal).

Mascola's bald, unsupported assertions are not enough to create a genuine issue of material fact meriting a denial of the summary-decision motion. Mascola failed to dispute the Department's factual assertions, which were supported by substantial credible evidence in the record. Because Mascola failed to establish the Commissioner's final decision and order were arbitrary, capricious, or unreasonable, we affirm.

Affirmed.