ORDER NO. A16- 120

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

AGENCY DOCKET NO. E14-23213

PROCEEDINGS BY THE COMMISSIONER OF BANKING AND INSURANCE, STATE OF NEW JERSEY TO FINE CHARLES BOAS PURSUANT TO THE NEW JERSEY INSURANCE FRAUD PREVENTION ACT, N.J.S.A. 17:33A-1 et seq.	ORDER DENYING MOTION TO VACATE FINAL ORDER NO. 15-BFD 08-23213-24

This matter comes before the Commissioner of the Department of Banking and Insurance ("Commissioner") pursuant to a motion by Respondent Charles Boas ("Boas" or "Respondent") seeking to vacate the default judgment entered against him in Final Order No.15-BFD-08-23213-24 ("Final Order"), and to reinstate the case on its merits. The Final Order found that the Respondent violated the New Jersey Insurance Fraud Prevention Act ("Fraud Act"), N.J.S.A. 17:33A-1 et seq., imposed civil penalties, attorneys' fees and a surcharge totaling $504,459 against the Respondent for those violations, and ordered him to pay restitution to Horizon in the amount of $53,384.52.[1] For the reasons set forth below, the request to vacate the civil penalties and to reinstate this matter for a hearing on its merits is DENIED.

PROCEDURAL HISTORY

On September 14, 2014, the Department of Banking and Insurance ("Department") issued Order to Show Cause No. 14-23213 ("OTSC"). The OTSC alleged that Boas, as a New Jersey licensed chiropractor, violated various provisions of the insurance laws of the State of New Jersey by submitting fraudulent claims to Horizon Blue Cross Blue Shield ("Horizon") for

[1] In this present motion, Boas does not seek to have the restitution vacated.

fabricated chiropractic services. In four separate counts, the OTSC alleged that, by completing daily treatment sheets for services not provided and by submitting claims to Horizon for dates of services where four different patients were not treated, Boas violated the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 et seq., specifically N.J.S.A. 17:33A-4a(1) and N.J.S.A. 17:33A-4a(2).

The OTSC also alleged that Boas was indicted by a Grand Jury on sixty (60) counts of Second Degree Health Care Claims Fraud in connection with submitting claims to Horizon for such fabricated services and one count of Theft by Deception in that Boas received payment from Horizon for the fraudulent claims. On or about April 21, 2014, Boas pleaded guilty to Third-Degree Insurance Fraud and admitted that he submitted fraudulent claims to Horizon for fabricated chiropractic services.

By letter dated September 23, 2014, the Department served a copy of the OTSC upon Boas via regular and certified mail at his address in Bayonne, NJ. Final Order No. 15-BFD-08-23213-24, Certification of DAG Gordon Queenan ("Queenan Certification") at ¶3. On September 26, 2014, the certified mail was signed for by a competent member of Boas' household. Id. at ¶4. Additionally, by letter dated December 8, 2014, the Department served a copy of the OTSC upon Boas via regular and certified mail at his address in Matawan and, on December 14, 2014, the certified mail was signed for by a competent member of Boas' household. Id. at ¶¶6-7. On both occasions, the regular mail was not returned. Id. at ¶¶5 and 8.

Boas acknowledged that he received the OTSC and noted that he sent the OTSC to his then attorney Brian Neary, Esq. ("Neary") via facsimile on September 26, 2014. Brief in Support of Motion to Vacate Default Final Order ("Boas Moving Brief"), Certification of Boas ("Boas Certification") at ¶¶4-6. Boas also acknowledged receiving the second service of the

OTSC from the Department in December 2014 and further noted that, on December 19, 2014, he again reached out to Neary and faxed the second set of documents to him for the purpose of being represented in this matter. Id. at ¶7. Boas attached facsimile transmission verification reports dated September 26, 2014, and December 19, 2014, to his certification to support this assertion. Id. at Exhibits A and B. Boas further noted that he received assurances from Neary that this matter would be handled. Id. at ¶8. He stated that, "[a]s this matter was separate from the original criminal complaint that he was handling for me, [Neary] eventually requested an additional retainer amount." Ibid. Accordingly, Boas stated that he paid Neary an additional $2,000 to represent him in this matter and to represent him before the Board of Chiropractic Examiners. Id. at ¶9.

Boas ultimately did not provide an answer to the OTSC. Final Order No. 15-BFD-08-23213-24 at 10.

On November 16, 2015, the Department issued Final Order No. 15-BFD-08-23213-24 finding that, although Boas was given notice of the charges in the OTSC and an opportunity to contest these charges at a hearing, Boas failed to provide a written response to the charges. Final Order No. 15-BFD-08-23213-24 at 9-10. In this Final Order, it was determined that Boas violated various provisions of the insurance laws of New Jersey as set forth in Counts 1-4 of the OTSC, specifically N.J.S.A. 17:33A-4a(1) and N.J.S.A. 17:33A-4a(2), by fabricating daily treatment sheets and submitting fraudulent insurance claims to Horizon for at least one-thousand eleven (1,011) fraudulent claims of services where no services were provided. Id. at 10. Therefore, the Commissioner ordered that Boas, pursuant to N.J.A.C. 11:16-7.6, pay civil and administrative penalties of $500,000 to the Commissioner and, pursuant to N.J.S.A. 17:33A-5.1, that Boas pay the statutory insurance fraud surcharge in the amount of $1,000. Id. at 10-11. It

was further ordered that, pursuant to N.J.S.A. 17:33A-5c and N.J.A.C. 11:16-7.9(c), Boas pay reasonable attorneys' fees totaling $3,459. Id. at 11. Moreover, pursuant to N.J.S.A. 17:33A-5c and N.J.A.C. 11:16-7.9(c), Boas was ordered to pay restitution to Horizon in the amount of $53,384.52. Ibid.

By letter dated March 14, 2016, Boas submitted the instant Motion to Vacate Default Judgment. In this motion, Boas seeks to vacate the $504,459 default Final Order entered against him by the Department. Boas Moving Brief at 2. Boas further seeks to reinstate the case for a hearing on its merits. Ibid.

In support of the motion, Boas' counsel submitted a brief and a certification by Boas. Boas does not dispute that he received the OTSC or that he failed to respond in the 20-day timeframe established by N.J.A.C. 11:16-7.8(a). Instead, he states that he provided the documentation he received from the Department to Neary in addition to $2,000 for the purposes of having Neary represent him in this particular matter. Boas Certification at ¶¶ 6-9. Ultimately, Boas ascribes blame to his former attorney Neary for not providing an answer to the OTSC. In his certification, Boas states as follows:

> Over time, I received assurances from [Neary] that this matter would be handled. As this matter was separate from the original criminal complaint that he was handling for me, [Neary] eventually requested an additional retainer amount. I paid [Neary] an additional $2,000.00 to represent me on this matter and a matter before the Board of Chiropractic Examiners.
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> [Boas Certification at ¶¶8 and 9].

Boas argues that the entry of default in this action should be set aside because there is good cause to vacate the judgment. Boas Moving Brief at 2. Boas further contends that his former attorney's inaction constitutes excusable neglect under R. 4:50-1 and that he has meritorious defenses worthy of judicial determination. Id. at 5-7. He contests all of the

allegations and avers that he appropriately treated his patients and billed in accordance with the treatment provided. Id. at 7.

Boas also asserts that, despite reaching out to Neary after receipt of the Final Order, Neary did not respond. Boas Certification at ¶11. He further stated that he recently retained Keith Roberts, Esq., to represent him before the Board of Chiropractic Examiners. Id. at ¶12. Boas further asserts that he was surprised to learn that a judgment in excess of $500,000 had been entered against him and avers that he has a clear defense to the charges of the Order to Show Cause. Id. at ¶14.

In the brief in support of this motion submitted by Boas' current attorney, Boas argues that an "application to vacate a default judgment is 'viewed with great liberality'" and "the power to vacate a default judgment so as to permit the pleading of a meritorious defense should be freely exercised when the enforcement of the judgment would be unjust, oppressive or inequitable to the party moving to vacate it." Boas Moving Brief at 3, citing M & D Assocs. v. Mandara, 366 N.J. Super. 341 (App. Div. 2014); Marder v. Realty Constr. Co., 84 N.J. Super. 313, 319 (App. Div.), aff'd 43 N.J. 508, 205 (1964); Tradesmens Nat. Bank & Trust Co. v. Cummings, 38 N.J. Super. 1, 4 (App. Div. 1955).

Boas further notes that the entry of default judgment may be set aside pursuant to R. 4:50-1(a), which provides that such relief may be granted on the basis of mistake, inadvertence, surprise, or excusable neglect. Id. at 5. Boas argues that the Appellate Division has found, on multiple occasions, that there was excusable neglect justifying the vacation of a default judgment where the basis for the neglect involved either the miscommunication between the attorney and client or a mistake on the part of the attorney. Id. at 5-6 (citing Reg'l Constr. Corp. v. Ray, 364 N.J. Super. 534, 541 (App. Div. 2003) (where a client mistakenly assumed that his attorney in

another action was addressing the matter at issue); Twp. of Mahwah v. Merrill, No. A-0600-14T4, 2015 WL 5309436 at *5 (App. Div. Sept. 10, 2015)[2] (court noting that careless mistakes by counsel may provide grounds for excusable neglect in light of the fact that the "ultimate goal of our system is to secure adjudications on the merits"); Goldhaber v. Kohlenberg, 395 N.J. Super. 380, 391 (App. Div. 2007) (reliance on the mistaken advice of counsel may provide grounds for excusable neglect); Court Inv. Co. v. Perillo, 48 N.J. 334 (1996) (the Court found excusable neglect when defendants had relied upon the word of their attorney that he had addressed the matter when, in fact, he had done nothing).

Boas emphasized that, in light of this precedent, the default judgment should be set aside because Boas' failure to answer the complaint is excusable in light of Boas' reliance on the advice of his attorney and his reasonable understanding that this matter was being handled. Boas Moving Brief at 6. He states that he faxed the pleading documents to his lawyer twice, "had conversations with his lawyer, and paid his lawyer for the services. The facts in this case provide a sufficient basis for Boas' good faith belief that his lawyer was representing his interests." Ibid.

The Department opposed Boas' motion arguing that Boas failed to meet the standard to vacate a default judgment in that that he failed to demonstrate excusable neglect and a meritorious defense.[3] Department Opposition Brief at 5. The Department noted that, although Boas emphasizes the "liberality" courts exercise in overturning default judgments, he ignores the tenet that a "default judgment 'will not be disturbed' unless a litigant proves excusable neglect and a meritorious defense." (citing Arrow Mfg. Co., Inc. v. Levinson, 231 N.J. Super., 527, 534

[2] Although R. 1:36-3 requires that the court and all parties be served with a copy of the opinion and of all contrary unpublished opinions known to counsel, no such copies were served.

[3] The Department's brief is not signed but the supporting certification is signed by Deputy Attorney General Nekoukar and is dated April 11, 2016.

(App. Div. 1989); Fineberg v. Fineberg, 309 N.J. Super. 205, 215 (App. Div. 1998), citing Marder v. Realty Constr. Co., 84 N.J. Super. 313, 318-19 (App. Div.), aff'd, 43 N.J. 508 (1964)). Ibid. The Department refutes Boas' explanation that his attorney's failure to act constitutes excusable neglect as follows:

> Respondent argues that he notified his lawyer twice over a fifteen month period of time and had a "good faith belief" that his attorney was handling the matter. This argument, however, is discordant when considering Respondent's pronounced lack of diligence in neglecting to follow up, or even so much as inquire with his attorney, about the status of this matter. In addition, Respondent's motion conspicuously lacks any certification from his attorney confirming Respondent's claims.
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> [Department Opposition Brief at 6].

The Department also argues that Boas offers no substantive proof of his correspondence with Neary in that he merely provides documentation of fax cover sheets[4] but that these cover sheets do not demonstrate which documents, if any, were actually sent to Neary. Id. at 7. The Department further observed that this matter was pending for more than 18 months with no action taken by Boas, which is not consistent with "reasonably prudent" conduct. Ibid. (citing Tradesmens Nat'l Bank v. Cummings, supra, 36 N.J. Super. at 6). Further, the Department calls into question Boas' reliance on Reg'l Const. Corp. v. Ray, for the premise that "neglect is excusable whenever a client mistakenly believes an attorney he retained in another action was handling the action in which default was entered," stating that this is not the premise for which this case stands. Ibid. The Department points out that the "circumstances constituting excusable neglect [are] ... fact-sensitive." Ibid. (citing Pressler and Verniero, Current N.J. Court Rules, comment 5.1.2 on R. 4:50-1 (2016)). The Department further notes that Reg'l Const. Corp

[4] While DAG Nekoukar refers to this documentation as fax cover sheets, they are in fact facsimile transmission verification reports which provide verification that the documents were successfully transmitted to the number indicated on these documents. See Boas certification at Exhibits A and B.

involved separate lawsuits involving the same parties whereas, in the underlying matter, the criminal insurance fraud matter "bears little resemblance to this, a civil administrative law matter, and involves different and separate plaintiffs." Id. at 7-8. Further, the Department notes that the civil action was served upon Boas in September 2014 after the criminal action had already been resolved. Ibid. The Department further observes that a critical factor in determining whether to vacate default is the time period between entry of default judgment and the motion to vacate. Ibid. Here, the Department advances, Boas waited nearly four months to challenge the default Final Order where only 34 days elapsed after entry of the judgment in Reg'l Constr. Corp. Ibid.

The Department further emphasizes that Boas did not follow-up with Neary about the answer to the OTSC and notes that there is no proof that the $2,000 was paid by Boas to Neary for representation in the underlying matter as no retainer agreement was offered to support this assertion. Id. at 3.

Lastly, the Department observes that Boas provides merely a one sentence conclusory statement that he has meritorious defenses to the case at hand. Id. at 10-11. The Department notes, however, that "this flies in the face of Respondent's conviction for criminal insurance fraud, which arose out of the same circumstances upon which the OTSC is based." Id. at 11. The Department notes as follows:

> Here, Respondent pled guilty to criminal insurance fraud, in particular N.J.S.A. 2C:21-4.6a, in connection with the indictment charging that he submitted claims to Horizon for fabricated chiropractic services. N.J.S.A. 2C:21-4.6a mirrors language from the Fraud Act that is relevant to this matter.
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> [Id. at 13].

The Department argues that "Respondent's criminal conviction under N.J.S.A. 2C:21-4.6a is de facto proof of his liability under the Fraud Act for the same conduct." Ibid. The Department also argues that the Respondent would be collaterally estopped from presenting a meritorious defense in that the previous criminal conviction satisfies all of the four elements necessary to establish collateral estoppel. Department Opposition Brief at 14, fn2.

LEGAL DISCUSSION

Boas has failed to satisfy the legal standard necessary to vacate a default judgment and, therefore, Boas' request to vacate the civil penalty imposed by Final Order No. 15-BFD-08-23213-24 and to have a hearing on its merits is DENIED.

It is well settled that the Commissioner has the inherent power to reopen and reconsider his decisions as well as correct his own judgments. Duvin v. State, 76 N.J. 203 (1978). While not controlling on administrative agencies, the Rules of Court applicable in Superior Court matters have been used to guide similar issues that arise in administrative proceedings, recognizing that administrative agencies possess the power, comparable to the courts pursuant to R. 4:50-1, to reopen judgments and final decisions in the interests of justice with good cause shown. Beese v. First Nat'l Stores, 52 N.J. 196 (1968) (finding that the Workmen's Compensation Bureau has the power, comparable to that possessed by the courts, to reopen judgments for fraud, mistake, inadvertence, or other equitable grounds); Stone v. Dugan Brothers of N.J., 1 N.J. Super. 13 (App. Div. 1948) (regarding the power to open judgments upon good cause shown, New Jersey Courts, in furtherance of the interests of justice, apply similar principles to administrative proceedings).

R. 4:50-1 provides the following guidance in determining whether to provide relief from a Final Order:

> On motion with briefs, and upon such terms that are just, the court may relieve a party...from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.

In specifically considering R. 4:50-1(a), the New Jersey Supreme Court has noted that: "[t]he four identified categories...when read together, as they must be, reveal an intent by the drafters to encompass situations in which a party, through no fault of its own, has engaged in erroneous conduct or reached a mistaken judgment on a material point at issue in the litigation." DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 262 (2009). Moreover, the mistakes contemplated under the rule are intended to provide relief to a party from litigation errors that a party could not have protected against. Id. at 263. "A party who simply misunderstands or fails to predict the legal consequences of his deliberate acts cannot later, once the lesson is learned, turn back the clock to undo those mistakes." Id. at 263. (citation omitted). Additionally, "[e]xcusable neglect may be found when the default was attributable to an honest mistake that is compatible with due diligence or reasonable prudence." US Bank Nat'l. Ass'n v. Guillaume, 209 N.J. 449, 468 (2012) (citing Mancini v. EDS, 132 N.J. 330 (1993)). "Mere carelessness or lack of proper diligence on the part of an attorney is ordinarily not sufficient to entitle his clients to relief from an adverse judgment in a civil action." Baumann v. Marinaro, 95 N.J. 380, 394 (1984) (citing In re T, 95 N.J. Super. 228, 235 (App. Div. 1967)). Moreover, R. 4:50-1(f) authorizes relief from judgments "only when truly exceptional circumstances are present." Id. at 395.

With this analogous rule and precedent in mind, I herein find that Boas has failed to demonstrate excusable neglect or a meritorious defense to warrant relief from the provisions of the default Final Order.

Boas avers that attorney Neary's failure to answer the underlying OTSC on his behalf constitutes excusable neglect sufficient to support his motion to vacate the Final Order pursuant to R. 4:50-1. Boas argues that he acted properly when he received the OTSC by forwarding the OTSC to his then attorney, Neary, for the purposes of having Neary represent him in the underlying matter. Boas ultimately attempts to absolve himself of all responsibility by placing blame for his failure to answer squarely upon Neary. As evidence that he forwarded the OTSC to Neary, Boas provides a facsimile transmission verification report dated September 26, 2014, which indicates that he sent a twelve page document and a second facsimile verification report on December 29, 2014, which indicates that he sent a thirteen page document, both to the telephone number asserted to belong to attorney Neary. Boas Certification, Exhibits A and B. Given that the dates on the respective facsimile verification reports correspond to the two dates of service of the OTSC upon Boas and given that the page lengths indicated on the facsimile verification reports roughly correspond to the length of the order and attached cover letter, it is conceivable that Boas forwarded such documents to Neary. The issue of the authenticity of Neary's facsimile telephone number was not raised by the Department, and no evidence was offered to dispute that the facsimile number in fact belonged to attorney Neary.

However, even accepting this assertion, whether Neary ever agreed to represent Boas is unclear. Boas asserts that he spoke with Neary and received assurances from him that he was being represented in this matter, but does not indicate when such conversations occurred or when such assurances were offered. Boas certifies that he paid an additional $2,000 to Neary for his

representation in this matter and to represent him with regard to the Department's action and before the Board of Chiropractic Examiners and provides, as further evidence of this assertion, a copy of a check written out to Neary by Boas. Boas Certification, ¶ 9 and Exhibit C. Notably, this check is dated July 6, 2015, almost eight months after he first sent the OTSC to Neary. Boas Certification, Exhibit C. While the evidence demonstrates that Neary deposited this check into his attorney business account, no evidence was presented that such check was a retainer for representation in the underlying matter since no retainer agreement was provided. See Boas Certification at Exhibit C. Therefore, I agree that it is unclear that Neary was retained to represent him in this specific matter. Department Opposition Brief at 3. Further, it is also unclear what, if any, efforts Boas made to follow up with Neary between December 2014, the date that Boas sent second fax to Neary, and July 2015, when the $2,000 was purportedly sent to Neary as his retainer fee. According to Boas, Neary failed to answer the OTSC or to respond to Boas' attempts to reach out to him. Boas further claims that he only became aware of the failure to answer the OTSC when he was served with the Final Order in December 2015. Boas Certification at ¶10.

Boas offers no adequate explanation as to what happened during the 14 months or so in between September 26, 2014, when Boas certifies that he first sent the OTSC to Neary, and November, 2015, when the Final Order was issued. For eight months to pass between the asserted transmittal of the OTSC to attorney Neary and the alleged retainer fee for his defense, and then another four months to elapse between the retainer payment in July 2015 and issuance of the default Final Order, without any affirmative action by Respondent Boas to ensure that a defense against the Department's charges in the OTSC was presented demonstrates a lack of due diligence or reasonable prudence on his behalf. While Boas claims that he was surprised to find

out that a judgment in this matter had been entered against him, he failed to take any appropriate steps to ensure that his interests were being represented in the Department's proceeding against him. This type of mistake does not constitute excusable neglect. There is simply no adequate explanation as to why Boas did not follow up or at least inquire of his attorney as to the status of the case. Further, even if Neary had been retained to represent Boas in this matter, Neary's lack of adequate response in this matter would also not constitute excusable neglect for the same reasons stated above. For these reasons, Boas fails to satisfy the standard set forth in R. 4:50-1(a) and (f). See Baumann v. Marinaro, supra, 95 N.J. at 394 (citing In re T, 95 N.J. Super. 228, 235 (App. Div. 1967)).

Although Boas attempts to align the facts in this matter to those in Reg'l Constr. Corp. v. Ray, several critical distinctions are apparent. 364 N.J. Super. 534 (App. Div. 2003). In Reg'l Const. Corp., the court held there were sufficient grounds to vacate the judgment entered against Ray even though he failed to file a responsive pleading because "the existence of other lawsuits involving these parties and Ray's assumption that his counsel in the other actions was addressing this action seems reasonably sufficient to constitute excusable neglect when examined against the very short time period between the entry of default judgment and the motion to vacate."[5] Id. at 541. By contrast, in the underlying matter, the Department initiated the action by serving an OTSC upon Boas in September 2014. At such time, Boas was aware that his criminal matter was resolved because he had already pleaded guilty to committing Third Degree Insurance Fraud in violation of N.J.S.A. 2C:21-4.6(a) and a Judgment of Conviction was entered against him on July 25, 2014. In fact, Boas recognizes that he was aware that he was involved in separate matters in his certification stating "[a]s this matter was separate from the original criminal

[5] The central issue in Reg'l Const. Corp. v. Ray concerned whether or not a court could impose a condition upon the granting of relief under R. 4:50-1, such as the posting of a bond.

complaint that he was handling for me, [Neary] eventually requested an additional retainer amount." Boas Certification at ¶8. Boas further notes that he sent an additional retainer to Neary for his representation in the separate matter before the Board of Chiropractors. Id. at ¶9. Therefore, unlike Ray in Reg'l Constr. Corp. v. Ray, who was engaged in simultaneous suits with the same parties and likely to be confused about representation, Boas presented little evidence that he was in any way confused that he was involved in separate matters or that he was confused about Neary's representation of him regarding these separate matters. The facts presented by Boas simply do not support this conclusion. Moreover, Boas' nearly four month delay in filing the instant motion after entry of the final judgment in the underlying matter also distinguishes this matter from Reg'l Constr. Corp. v. Ray. The uncontested facts of this matter show repeated delay and lack of due diligence by Boas with regard to responding to the Department's charges of Fraud Act violations, and thus I cannot find that Boas acted with "excusable neglect" in his handling of this matter.

Generally, an application to vacate a default judgment is "viewed with great liberality and every reasonable ground for indulgence is tolerated to the end that a just result is reached." Marder v. Realty Constr. Co., supra, 84 N.J. Super. at 319; see also Morristown Hous. Auth. v. Little, 135 N.J. 274, 283-284 (1994); Mancini, 132 N.J. at 332. Nevertheless, a default judgment will not be disturbed unless the failure to answer or otherwise appear and defend was excusable under the circumstances and unless the defendant has a meritorious defense; either to the cause of action itself, or, if liability is not disputed, to the quantum of damages assessed. U.S. Bank Nat'l. Ass'n v. Guillaume, supra, 209 N.J. at 468-469; Marder v. Realty Constr., supra, 84 N.J. Super. at 318 (citing Foster v. New Albany Mach. and Tool Co., 63 N.J. Super. 262, 269-270 (App. Div. 1970)). Here, Boas does not challenge the quantum of the sanctions imposed.

As discussed above, Boas has not demonstrated that his failure to answer was excusable under the circumstances. Additionally, he has not established a meritorious defense necessary to vacate the judgment and civil penalty imposed by the Final Order. Boas baldly contests the Fraud Act violations charged by the Department by offering an unsupported, conclusory statement that he "appropriately treated his patients and billed in accordance with the treatment provided." Boas offers no facts or substantive legal arguments as to any meritorious defenses to the allegations in the OTSC. On the other hand, the Final Order sets forth findings that Boas violated the Insurance Fraud Prevention Act on multiple occasions through his fraudulent submission of claims for treatment for four different patients including A.O., A.O., Jr., E.M. and E.M., Jr. These findings were based upon the Department's investigation, which included interviews and recorded statements from patients and copies of Horizon's claim history related to the patients he falsely claimed to treat. Boas, however, simply does not offer any substantive argument to the contrary. Therefore, Boas has failed to present a meritorious defense to the allegations.[6]

[6]The Department also argues that Boas has no meritorious defense to the underlying allegations because his conviction for criminal insurance fraud arose from the same circumstances upon which the OTSC is based and Boas therefore has de facto liability for the underlying civil insurance fraud allegations. While it appears that Boas pleaded guilty to committing Third Degree Insurance Fraud and admitted to engaging in similar conduct as he did in the underlying allegations, it does not appear that the factual circumstances are identical as the dates for the occurrence of the crimes and the initials of the individuals who he fraudulently claimed to have treated in the indictment differ from the dates and initials of those individuals who he fraudulently claimed to have treated in the OTSC. Therefore, without further explanation or evidence in this regard, the Commissioner declines to address this argument or the argument that Boas would be collaterally estopped from arguing the merits of his case as noted by the Department. Department Opposition Brief at 13, 14 fn2.

CONCLUSION

As set forth above, Boas has not demonstrated good cause to support the entry of an order vacating Final Order No. 15-BFD-08-23213-24. Accordingly, Boas' motion is DENIED.

11/7/16
Date

Richard J. Badolato
Commissioner

INORD/crm boas order