

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

OAL DOCKET NO.: BKI 14056-17
AGENCY DOCKET NO.: OTSC E17-57

COMMISSIONER OF THE NEW)	
JERSEY DEPARTMENT OF BANKING)	
AND INSURANCE,)	
)	
Petitioner,)	DECISION AND ORDER
)	GRANTING RESPONDENT'S
v.)	REQUEST FOR
)	INTERLOCTUTORY RELIEF
ANDREW TEPEDINO AND MICHAEL)	
TEPEDINO & SONS INSURANCE)	
AGENCY,)	
Respondents.)	

This matter comes before the Commissioner of the New Jersey Department of Banking and Insurance (“Commissioner”) pursuant to the authority of N.J.S.A. 52:14B-1 to -31, N.J.A.C. 1:1-1 to -21, the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48, (“Producer Act”) and all powers expressed or implied therein.

In a letter dated August 5, 2018 and received on August 13, 2018, Respondent Andrew Tepedino (“Respondent”) requested interlocutory review of Administrative Law Judge Tricia M. Caliguire’s (“ALJ”) July 25, 2018 ruling,¹ which severed the Respondent

¹ The Respondent’s August 5, 2018 letter did not specifically request that the ALJ’s ruling be reviewed on an interlocutory basis. However, the July 25, 2018 Order at issue in this matter advised the parties that the “order may be reviewed by the COMMISSIONER OF THE DEPARTMENT OF BANKING AND INSURANCE, either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6.” As the hearings before the Office of Administrative Law in this matter have not yet been completed, Mr. Tepedino’s request is being

from this matter as a result of his failure to participate in a dial-in telephone conference that was held on July 23, 2018. The Department of Banking and Insurance (“Department”) did not file opposition to the Respondent’s request for interlocutory review.

Thereafter, in a letter dated August 21, 2018, the Commissioner granted the Respondent’s request for interlocutory review of the ALJ’s July 25, 2018 Order to Sever, but permitted the parties to supplement their motion submissions under the following briefing schedule: the Respondent’s supplement was due on or before August 24, 2018 and the Department’s opposition, and Respondent Michael Tepedino & Sons Insurance Agency’s opposition, if it so chose to submit, were both due on or before August 29, 2018.

On August 29, 2018, the Department filed their timely submission pursuant to the briefing schedule set forth above. The Department stated that it “does not object to the Respondent’s application to participate in this matter.” Moreover, the Department stated that it reserves all rights with respect to Respondent’s failure to appear, which “includes the right to apply to the ALJ for sanctions and/or ex parte relief, pursuant to N.J.A.C. 1:1-14.4.”

BACKGROUND AND PROCEDURAL HISTORY

On July 6, 2017, the Department issued the First Amended Order to Show Cause, Order No. E17-57, (“OTSC”) against the Respondents in this matter, Andrew Tepedino and Michael Tepedino & Sons Insurance Agency (collectively, “Respondents”) The OTSC contains eight separate Counts, which allege that the Respondents committed

construed as a request for interlocutory review, under the standards as set forth in

various violations of the Producer Act and certain regulations promulgated thereunder, in their sale of annuity contracts to a consumer. Specifically, the OTSC alleges that the Respondents made misrepresentations or incomplete or fraudulent statements to a consumer to induce same into surrendering two annuity contracts with Pruco Life Insurance Company (“Pruco”) and invest same into two Midland National Insurance Company (“Midland”) annuity contracts; made material misrepresentations on the applications of these annuities; forged the signature of the consumer on the applications; submitted revised forms to Midland that contained additional misrepresentations; advised Midland that the Pruco annuities were purchased in 1995 and that the consumer did not incur fees in surrendering the Pruco annuities, when the Pruco annuities were actually only a year old, were not purchased in 1995, and the consumer incurred significant fees in connection with his surrendering of the annuities; and did not provide the consumer with a buyer’s guide in a timely manner. The Respondents filed individual answers to the OTSC and the matter as a contested case was transmitted to the Office of Administrative Law (“OAL”) for a hearing.

A dial-in telephone conference was scheduled to take place in this matter on July 23, 2018. However, the Respondent failed to call into the OAL to participate in that conference.² As a result of his failure to attend the telephone conference, a Failure to Appear notice was issued on July 25, 2018, and on the same date, the ALJ issued an Order to Sever the Respondent from the matter. This interlocutory review concerns the

N.J.A.C. 1:1-14.10.

² Any notice provided by the OAL to the parties in this matter was not included by the parties in their submissions in the present matter. As such, it is not clear if the notice specifically directed the Respondent that he would need to dial into the telephone conference in order to participate in same.

ALJ's July 25, 2018 Order to Sever, which severed the Respondent from the proceedings before the OAL in this matter.

DECISION

N.J.A.C. 1:1-14.10 sets forth the standards by which an agency head may review rulings and orders of an ALJ on an interlocutory basis. N.J.A.C. 1:1-14.10 provides for a two-tiered review process. First, the agency head determines whether interlocutory review of an order or ruling should be granted. Second, if the agency head determines to conduct an interlocutory review, he or she then decides whether the order or ruling should be upheld, rejected, or modified. The decision memorialized herein constitutes the second step of this two-tiered process, and as such, I now turn to the substance of the Respondent's motion seeking invalidation of the ALJ's ruling that he should be severed from the proceedings before the OAL in this matter.

Although not explicitly set forth in the Order to Sever, it appears that the ALJ issued her ruling pursuant to N.J.A.C. 1:1-14.4 and N.J.A.C. 1:1-3.3(b). Specifically, N.J.A.C. 1:1-14.4, provides that "[i]f, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, . . . the judge shall . . . direct the clerk to return the matter to the transmitting agency for appropriate disposition. . . ." Further, N.J.A.C. 1:1-3.3(b) provides that once a case is returned to the transmitting agency for failure of a party to appear at a proceeding, "[a]ny explanations regarding the failure to appear must be in writing and received by the transmitting agency head within 13 days of the date of the Clerk's notice returning the case." Moreover, "[i]f based on such explanations, the agency head believes the matter should be rescheduled

for hearing, the agency head may re-transmit the case to the Office of Administrative Law.” N.J.A.C. 1:1-3.3(b).

In the present matter, however, the ALJ did not return the case to the Department for disposition. Instead, the ALJ severed the Respondent from all further proceedings before the OAL as a result of his failure to attend a dial-in telephone conference and only sent the Order to Sever to the Department for further disposition. In his August 5, 2018 letter, the Respondent, who is a pro se litigant, addressed his failure to attend the July 23, 2018 telephone conference by stating that he was under the impression that the OAL would call him for his participation in the telephone conference because for every “previous hearing [that] was conducted[, the Respondent] received a direct phone call.” Moreover, the Respondent stated that he “did not have a direct dial in phone number” and did not know whom to contact in order to participate in the telephone conference. While the Respondent acknowledged that he did not attend the telephone conference, his letter advised that he wishes to participate in the proceedings in this matter, which are currently being litigated between the remaining parties and which directly relate to the Respondent’s alleged wrongful actions while employed by Respondent Michael Tepedino & Sons Insurance Agency. Additionally, the Respondent’s request to be rejoined as a party to the pending litigation and participate in the proceedings before the OAL is not objected to by the Department. In light of the foregoing and in order to avoid a piece-meal adjudication, it is appropriate to return the Respondent to the OAL and rejoin him as a party to this matter.

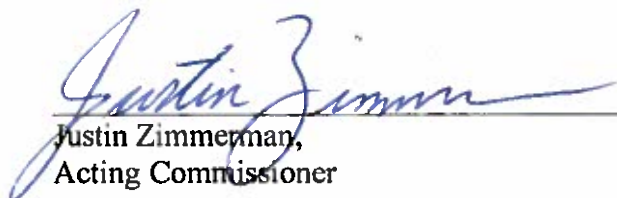
CONCLUSION

For the reasons set forth above, the ALJ's July 25, 2018 Order to Sever is REJECTED. Moreover, for the above reasons it is on the 4th day of September, 2018

ORDERED that:

Respondent Andrew Tepedino is hereby rejoined as a party and is permitted to participate in the proceedings before the OAL in relation to this matter.

9/4/18
Date


Justin Zimmerman,
Acting Commissioner

AV Tepedino order granting interlocutory review/Interlocutory Review/Orders