

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
1511 PONTIAC AVENUE, BLDG. 69-2  
CRANSTON, RHODE ISLAND 02920**

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<b>In the Matter of:</b>	:	
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<b>Ralph Catalozzi d/b/a Future Contracting &amp; Estimators, LLC,</b>	:	<b>DBR No.: 16IN001</b>
	:	
<b>Respondent.</b>	:	

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**DECISION**

**I. INTRODUCTION**

This matter arose pursuant to an Order to Show Cause Why Order Should not Issue to Cease and Desist Unlicensed Activities, Notice of Intent to Impose Administrative Penalties, Notice of Hearing and Appointment of Hearing Officer (“Order to Show Cause”) issued by the Department of Business Regulation (“Department”) to Ralph Catalozzi d/b/a Future Contracting & Estimators, LLC (“Respondent” or “Catalozzi” or “FCE”) on July 26, 2016. A pre-hearing conference was held on August 9, 2016. After the exchange of discovery and several status conferences, this matter was heard on October 4 and 18, November 20 and 26, and December 3, 2018. During the course of hearing, the undersigned twice denied a motion by Respondent to dismiss.<sup>1</sup> The parties were represented by counsel and briefs were timely filed by February 22, 2019.

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<sup>1</sup> The Respondent argued that the evidence showed he never called himself a public adjuster so that this matter should be dismissed. The motion was denied because the issue does not solely revolve around what the Respondent called himself but whether his actions constituted unlicensed public adjusting. The second motion to dismiss was based on the claim that the Respondent was only defending his estimate to the insurance company to which the Department objected. The second motion was denied because again the issue required a determination whether the Respondent’s actions constituted unlicensed public adjusting.

## II. JURISDICTION

The administrative hearing was held pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 27-10-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and 230-RICR-10-00-2 *Rules of Procedure for Administrative Hearings* (“Hearing Regulation”).

## III. ISSUE

Whether the Respondent violated R.I. Gen. Laws § 27-10-1.1(a) by acting as unlicensed adjuster, and if so, what should be the sanction.<sup>2</sup>

## IV. TESTIMONY AND MATERIAL FACTS

Keith Kinscherf (“Kinscherf”) testified on behalf of the Department. He testified that he handles large property claims for Liberty Mutual (“LM”) and in his experience the terms, estimator and adjuster, are used interchangeably and LM will take a claim from an insured, a contractor, or public adjuster. He testified that the relevant claim file referred to the Respondent as a “PA,” a public adjuster. He testified that he believed the Respondent was a public adjuster and a contractor. He testified he met with the Respondent at the property to discuss the preliminary repair estimate and discuss what had been damaged and he spoke to the Respondent regarding the settlement check. On cross-examination, he testified that the Respondent only told him he was acting as a contractor and the Respondent’s letter of representation does not say public adjuster and is a contract for a contractor. Exhibit 10. He testified that the Respondent agreed to his, Kinscherf’s, pricing for the house. On re-direct examination, he testified the Respondent represented himself as a contractor and negotiated the total loss on behalf of Robin Desmarais as an insured which is what a public adjuster does. On re-cross examination, he testified he came to an agreement with Respondent over the job which is what a contractor does.

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<sup>2</sup> The parties stipulated that the Respondent was not licensed as a public adjuster in Rhode Island.

A recording was played of Kim Catalozzi calling LM. During the call, she said she was from FCE and was calling in a property loss for one of LM's insureds (Robin Desmarais). When LM asked Kim Catalozzi her relationship with the insured, she said that the insured hired them to do the "public adjusting work" for them. She described the damage and gave the policy number and name and address of the insured and received a claim number and was told LM would contact her once the claim was assigned to a LM adjuster. When asked what public adjusting firm she was with, she said FCE. Exhibit Three (3).<sup>3</sup>

Robin Desmarais ("Desmarais") testified on the behalf of the Department. She testified that she was divorced in 2012 and the house was part of her divorce settlement but her husband's name was still on the house. She testified that due to a storm on August 4, 2015, a tree crashed in her house causing damage. She testified that the next day when she was outside looking at her damage, her neighbor, Anne Moniz, told her that she was having someone come look at her damage and asked if she wanted him to stop by so she agreed. She testified that the Catalozzi came by with a woman named "Maria" and introduced himself and said he had been in business for 40 years and had a business card listing property loss and reimbursement and he asked to look at her insurance policy to see if she had coverage but she only had the face sheet. She testified that he used insurance terms such as "making her whole" and "proof of loss." She testified that Respondent and Maria said they handled property losses and they would deal with her insurance company since the company would try to low ball her and they would get her a fair amount for what she lost and if she hired them for construction, they would not charge an estimating fee. She testified that the Respondent said they would make sure her damage was included, and she could make a supplemental claim if anything was missed and Catalozzi would meet with the insurance

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<sup>3</sup> This is an agreed to exhibit. Any of the Respondent's exhibits will be noted as a Respondent exhibit.

company because this is what they do and she (Desmarais) was not in the insurance business. She testified that on another day, Respondent and Maria told her to put together a list of her damaged personal items from inside the house which would be covered. She testified that she later sent a list to Maria and Maria re-typed it. She testified that Maria left off some items since Maria said she (Desmarais) could supplement it later and told her not to make too high of a claim so that LM questioned it. She testified that Maria told her LM would not cover damaged food in the refrigerator, but she did include food and it was covered.

Desmarais testified that Catalozzi said not to call the insurance company and not to say anything about the loss. She testified that she wrote her name and insurance policy down for Maria that day. She testified that she did not see Kim Catalozzi that day and Exhibit 10 is typed and dated August 4, but she did not sign it but Kim Catalozzi signed it as a notary for that date. She testified she saw Exhibit 10 for the first time in April or May 2016 when LM sent it to her. She testified that there was a later contract that she signed in November, 2015 but there are two (2) different versions. Exhibits 22 and 32 and Respondent's Exhibit Three (3). She testified she filed a complaint with the Contractor Registration Board ("Board") because she felt there was a problem with the Respondent's contractor work. Exhibit 23. She testified that the Respondent sued her for non-payment so she countersued. Exhibit One (1) (Respondent's lawsuit complaint against Desmarais). She testified that she filed a notary complaint against Kim Catalozzi whose notary license was suspended. Exhibits 26 and 27 (complaint and notary suspension).

On cross-examination, Desmarais testified the Respondent said he would work with her insurance company to get the best outcome and he would deal with the insurance company on her behalf. She testified that he asked for her policy which she gave him, and they discussed cost. She testified that he charged a 10% estimating fee but said he would waive the fee if she used him as

her contractor. She testified that she did not have her policy that day so she gave it to him later. She testified she did not sign Exhibit 10 but signed something on November 27, 2015. She testified that the Respondent took 10% from her personal property checks. Respondent's Exhibit Two (2) (copies of checks paid to Desmarais by Respondent). She testified LM issued checks to the Respondent for her personal property but the check from Respondent (as "Future Contracting & Estimators, LLC") was for 10% less and when she texted Maria, Maria said she was trying to waive the 10% fee. Respondent's Exhibit Two (2). She testified she sent a list of personal property to Respondent and Maria re-typed it to submit it to LM. Exhibit 14D.

Rachel Chester ("Chester"), Principal Insurance Analyst, testified on behalf of the Department. She testified that she oversees licensing and is familiar with the public adjuster law which provides for three (3) licenses including a public adjuster who is hired by a private individual. She testified that a public adjuster license is required to negotiate with insurance companies. She testified that the Respondent (Ralph Catalozzi and Future Contractors and Estimators) is not licensed and never have been licensed as a public adjuster. She testified that Catalozzi applied for a public adjuster license in March 2018 and it was not granted because he applied as a non-resident but lived in Rhode Island and he re-applied in July, 2018 but it was denied because of this pending matter. She testified that Catalozzi's Florida license is not a public adjuster license. Exhibit Six (6) (his Florida license). She testified that she is on the National Association of Insurance Commissioners' ("NAIC") working group that is drafting advisories to explain the difference between contractors and public adjusters. Exhibit Five (5) (draft advisory). She testified that an estimate would be for the scope and pricing of a job as compared to an adjuster who determines the benefits under the insurance contract and the adjuster has the responsibility to a client for the client to receive the benefits available under an insurance contract and the client

pays the public adjuster. She testified that she is familiar with the Respondent including an email from 2013 that was sent to the Respondent by the then Superintendent of Insurance, Elizabeth Kelleher Dwyer (“Dwyer”) regarding the scope of work being performed by the Respondent and Anne Moniz, an attorney in Respondent’s office. She testified that the Department does not approve forms such as the Exhibit 10 form.

On cross-examination, Chester testified that she and Dwyer spoke by telephone to Anne Moniz before the 2013 email was sent to the Respondent. She testified that there are no complaints in the database about Catalozzi. On re-direct examination, Chester testified that only a licensed adjuster would be cited for a contract, and the Department does not review contracts for unlicensed individuals. On re-cross examination, she testified the Department would issue a cease and desist order against unlicensed adjusting and she found copies of the Respondent’s contracts going back to 2003 but has no idea why the Department has such contracts and no cease and desist orders have been issued against him.

Benedetto Dalfonso (“Dalfonso”) testified on behalf of the Respondent. He testified that he works part-time for Catalozzi as a driver and running errands. He testified he remembered driving Catalozzi to the Department a few years ago and they waited in the lobby area and Catalozzi had some forms and a woman named Paula came out to the lobby and looked at the forms and said “ok.” On cross-examination, he testified it could be 2013-2014 that they came to the Department and he knew Catalozzi was making sure of his paperwork and he thought Paula’s last name was an Italian last name starting with “P.”

Catalozzi testified on the Respondent’s behalf. He testified that he has been an estimator for 50 years and he explained to Desmarais that he was a professional estimator and he could prepare estimates of damage for her if she intended to have a contractor. He testified Desmarais

said she would call the insurance company and he told her he would work with the insurance company on the structural estimate. He testified that he met Desmarais at her house and never told her he was a public adjuster but said he was a builder and estimator. He testified that he told her that he would prepare an estimate for anyone from the insurance company but that would be the extent of his office's participation. He testified that he did not explain the difference between an adjuster and estimator. He testified he left a copy of the engagement contract and she called and said she would like his services. He testified that she agreed with the insurance company on a settlement and chose him to do the work. He testified that he never charged a fee. He also testified he charged a fee and not a percentage. He testified LM's adjuster had no issue with his estimate and his office prepared a contract and Desmarais signed it and initialed each page and he testified about the two (2) different copies of the contract. He testified that there was a dispute over the remaining work and they were unable to reach a settlement.

Catalozzi testified that he has always been an estimator and on a regular basis he went to the Department to review his contracts and "Donna Pallozzi" reviewed his contract. He testified he reviewed his contract with her in the Department foyer and there was no problem with it and it is the one (August, 2015 authorization, Exhibit 10) that he used with Desmarais. He testified that it does not say public adjuster. He testified that he did not know that his daughter (Kim Catalozzi) told LM that they were adjusters until this proceeding and when he found out, he terminated her because of that error in judgment. He testified that he told Kinscherf that he was a builder and estimator and, he knows the difference between an estimator and adjuster and one needs to be licensed to be a public adjuster. He testified he was cited by the Department once.

On cross-examination, Catalozzi testified that when comparing the two (2) copies of the November 27, 2015 contract (for the work to be performed), contained in Exhibits 22 and 32, there

were differences in Desmarais' signatures including the "N" and how the notary number was included and Kim Catalozzi's signature and in Demarais' initialing of the contract. He testified the payment authorization (Exhibits 10 and 11) allowed the payment to go to the Respondent.

Catalozzi testified that when estimating on behalf of insureds, he interacts with an insurance company about his estimate which could be by meeting at the property, speaking over the telephone, calling in the claim, or speaking to the company adjuster so that he interacts in person, by telephone, and email. He testified that he prepares an estimate to cover the damage to the property and ensures the estimate covers enough so that his clients can get complete repairs without an issue. He testified he does not need to know what the insurance company will cover since he gets paid no matter what. He testified he does not ask customers for their insurance coverage. He testified he does not remember asking Desmarais for an insurance contract and does not remember getting Desmarais' insurance contract that day. He testified that he obtained Desmarais' policy information (Exhibit 32) just for the general information to get the claim number and not to see what was covered. He testified that Exhibit 14A is his letter to LM which is an inventory replacement list. He testified that he did not charge Desmarais a dime.

Catalozzi testified that Exhibit 18 was a settlement offer for the breach of contract to Desmarais so he took out costs and the banking fee so that the estimating fee of \$5,200 listed on Exhibit 18 was not 10% of \$56,000 (contract cost, LM payment, see below) but was a fee and the banking fee of \$600 represented what he did to remove the ex-husband's name from the deed. He testified that Exhibit 15 contains the documents that he sent to the mortgage company and LM on behalf of Desmarais. He testified that Exhibit 16 is his business card that says his license number but not what he is licensed as. He testified that he filed his lawsuit against Desmarais after her complaint about him to the Board. He testified he did do what it said in paragraph five (5) of his



complaint – “Further, Plaintiff was hired to work with Defendant’s insurance company’s claim representative to reach an acceptable insurance settlement and to perform the repair work at Defendant’s dwelling” and he approved the lawsuit.

On re-direct examination, Catalozzi testified that the differences in the November, 2015 contract signatures are because he always has two (2) contracts, one for homeowner and one for the office. He testified that nowhere on the business card does it say public adjuster. He testified he has a commercial roofing license and a general contractor license and a Florida adjuster license and the Board requires insurance. He testified that if he does a job, there is no fee but he was making a settlement offer in Exhibit 18 and the \$3,000 was for attorney fees. He testified his lawsuit was not a verified complaint.

On rebuttal, Paula Pallozzi, Associate Director, testified on the Department’s behalf. She testified she has worked at the Department for 36 years and her staff of 10 reviews policies, investigate complaints, and are responsible for 100,000 licensees. She testified she is familiar with the Respondent because of a complaint in 2006-2007. She testified she never met him in person and never spoke with him on the telephone and did not meet him in the Department foyer. She testified the Department does not review individual contracts and she is not aware of any approval of the Respondent’s contract. On cross-examination, she testified that in 2007, Dwyer, then legal counsel, emailed the Respondent to say that his contract looked like a public adjuster’s contract and could lead to issues. She testified that her notes indicate that Beth Vollucci (“Vollucci”) met with the Respondent and advised him that the Department does not approve contracts.

On rebuttal, Vollucci, Principal Analyst, testified on behalf of the Department. She testified that the Respondent came to the office about October, 2015 and asked her if an adjuster filed a complaint against him. She testified she met the Respondent in the lobby since he did not make

an appointment but they will meet walk-ins. She testified that the Respondent had a blank contract with him and showed it to her, and she told him that the word “attorney in fact” was a problem but that the Department does not approve contracts. She testified that the Department does not approve contracts and did not approve his contract and she told her supervisor, Pallozzi, about the meeting. On cross-examination, she testified she told Pallozzi who sent an email to Dwyer about the meeting and she was copied on the email. Exhibit 33 (October 20, 2015 email from Pallozzi to Dwyer regarding Vollucci’s meeting with Catalozzi).

On rebuttal, Catalozzi testified that he met Pallozzi before the August, 2015 Desmarais authorization and Pallozzi never said the Department was not authorized to pass on a contract and she did not have a problem with his contract and he never saw Vollucci before. On cross-examination, he testified that he met with Pallozzi before the Desmarais issue, and he was not sure when in 2015 but it was warm. He testified that either he or Pallozzi is telling the truth.

On rebuttal, Dalfonso testified that he remembered his meeting in the Department foyer with Catalozzi and he thought they met with Pallozzi and he remembered she looked Italian. By agreement of the parties, he was shown seven (7) agreed to photographs of women separately including one of Pallozzi and he testified that he could not identify which one was Pallozzi.

## V. DISCUSSION

### A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, “the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The

Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

### **B. Standard of Review for an Administrative Hearing**

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

### **C. Relevant Statutes**

R.I. Gen. Laws § 27-10-1 provides as follows:

Purpose and scope. This chapter governs the qualifications and procedures for the licensing of: (1) Public adjusters; (2) Company adjusters; and (3) Independent adjusters. It specifies the duties of, and restrictions on, public, company, and independent adjusters. The restrictions on public adjusters include limiting their licensure to assisting insureds in first-party claims.

R.I. Gen. Laws § 27-10-1.1 provides in part as follows:

Definitions.

(a) "Adjuster" means an individual licensed as either a public company or independent adjuster.

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(i) "Public adjuster" means any person who, for compensation or any other thing of value on behalf of the insured:

(1) Acts or aids, solely in relation to first-party claims arising under insurance contracts that insure the real or personal property of the insured, other than automobile, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract;

(2) Advertises for employment as a public adjuster of insurance claims or solicits business or represents himself or herself to the public as a public adjuster of first-party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or

(3) Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first-party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.

R.I. Gen. Laws § 27-10-1.2(a) provides as follows:

License required. (a) A person shall not act or hold himself out as a public, company or independent adjuster in this state unless the person is licensed in accordance with this chapter.

**D. Arguments**

The Department argued that the Respondent acted as an unlicensed public adjuster since he acted on behalf of Desmarais, the insured, in negotiating her first party non-automotive claim with Liberty Mutual for the losses on her home. The Department argued that the Respondent investigated and adjusted her losses and advised her about her claims for losses arising out of her homeowner's policy.

The Respondent argued that a public adjuster's obligation is to maximize the amount of money obtained for a claimant as opposed to determining and defending an estimate and he was not adjusting for Desmarais but acted as an estimator and defended his estimate.

### **E. Equitable Estoppel**

The Department's testimony and email show that Catalozzi went to the Department in October, 2015 with his authorization form. The Desmarais authorization (Exhibit 10) was signed in August, 2015.<sup>4</sup> The Respondent testified he met with Pallozzi, and Dalfonso remembered meeting someone with a similar name. It could be the Respondent asked for Pallozzi but Vollucci came out instead. Regardless of with whom Catalozzi met, the Department did not approve his form. Catalozzi may believe that showing a form to the Department constituted an approval, but Vollucci's testimony which is corroborated by the post-meeting email showed that the form was not approved. In addition, Catalozzi previously had been told in 2013 that the Department had not authorized him to use a form to negotiate with insurance companies. Exhibit 12.

Presumably the Respondent is making an *equitable estoppel* argument that the Department cannot hold his contract (Exhibit 10) against him because the Department approved it. However, for the sake of argument, even if it is assumed that the Department approved the contract prior to the Desmarais contract, there are no grounds for making such an argument.

On rare occasions, the Rhode Island Supreme Court has found that the doctrine of *equitable estoppel* (as opposed to generic equitable considerations) may apply against public agencies. The Supreme Court has held as follows:

in an appropriate factual context the doctrine of estoppel should be applied against public agencies to prevent injustice and fraud where the agency or officers thereof, *acting within their authority*, made representations to cause the party seeking to invoke the doctrine either to act or refrain from acting in a particular manner to his [, her, or its] detriment. *Romano v. Retirement Board of the Employees' Retirement System of the State of Rhode Island*, 767 A.2d 35, 39 (R.I. 2001) (citation omitted) (italics in original).

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<sup>4</sup> Desmarais testified that she did not sign this document and did not see it until LM gave it to her. While Kim Catalozzi notarized it, Kim Catalozzi admitted that she did not witness Desmarais sign it. Kim Catalozzi had her notary public license suspended for six (6) months because of that and other violations. Exhibit 27. Whether Desmarais signed or not, the Respondent relied on this authorization for interactions with LM. For the purposes of the analysis in this decision, it will be assumed that Desmarais signed the document; though, not in front of Kim Catalozzi.

Therefore, for a party to obtain *equitable estoppel* against an agency, it must show that a “duly authorized” representative of the agency made affirmative representations within the scope of his/her authority, that such representations were made to induce the plaintiff’s reliance thereon, and that the plaintiff actually and justifiably relied thereon to its detriment. *Casa DiMario, Inc. v. Richardson*, 763 A.2d 607, 612 (R.I. 2000). See also *El Marocco Club, Inc. v. Richardson*, 746 A.2d 1228, 1234 (R.I. 2000) (“key element of an estoppel is intentionally induced prejudicial reliance.”) (internal citation omitted).

However, a government entity and its representatives do not have “any implied or actual authority to modify, waive, or ignore applicable state law that conflicts with its actions or representations.” See *Romano*, at 40. *Romano* found that the “doctrine of *equitable estoppel* should not be applied against a governmental entity like the board when, as here, the alleged representations or conduct relied upon were *ultra vires* or in conflict with applicable law.” *Id.* at 38. See also *Technology Investors v. Town of Westerly*, 689 A.2d 1060 (R.I. 1997). Moreover, “any party dealing with a municipality ‘is bound at his own peril to know the extent of its capacity.’” *Casa DiMario*, at 612 (internal citation omitted). See also *Tidewater Realty, LLC v. State*, 942 A.2d 986, 995 (R.I. 2008) (well-settled principle that a municipal employee cannot bind the city without possessing the actual authority to do so and apparent authority and reliance on the part of the plaintiff are not adequate). Furthermore, “[a]s a general rule, courts are reluctant to invoke estoppel against the government on the basis of an action of one of its officers.” *Casa DiMario*, at 612. (internal citation omitted). In addition, the party must make a requisite showing that *equitable estoppel* should be applied to prevent fraud and injustice. See *Guilbeault v. R.J. Reynolds Tobacco Company*, 84 F.Supp.2d 263 (D.R.I. 2000).

There was no evidence that the Department made affirmative representations to the Respondent about the form to induce reliance thereon. While Catalozzi testified that he was told the form was “ok,” Vollucci testified that the Respondent was told “attorney-in-fact” was a problem and the Department did not approve contracts. Her testimony is corroborated by a post-meeting email and is consistent with what had previously been told to Catalozzi by the Department. Moreover, despite the fact that the evidence showed the Respondent was at the Department in October, 2015 when Exhibit 10 was signed on August 4, 2015, even if the Department had said that the contract was “ok,” the Department cannot waive applicable law. E.g. if a contract violates a statute or when one needs a license to be a public adjuster.

The evidence was there was no approval of the contract by the Department in October, 2015 or prior to the August, 2015 authorization contract. And even if there had been, such an approval would be irrelevant.

**F. Whether the Respondent Violated R.I. Gen. Laws § 27-10-1.1(a)**

**a. The Respondent’s Actions**

This matter turns on whether the Respondent’s actions constituted acting or aiding Desmarais in negotiating or effecting a settlement for loss or damage or investigating or adjusting losses or advising an insured about first-party claims for losses or damages arising out of policies of insurance that insure real or personal property. The answer to these questions necessitate a review of the Respondent’s actions in this matter.<sup>5</sup>

On August 4, 2015, Desmarais’ house suffered damage from a storm. Through her neighbor, Catalozzi went to her house and looked at the damage and explained he could charge her a fee for his services but if she used him as a contractor, he would waive the fee.

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<sup>5</sup> R.I. Gen. Laws § 27-10-2 provides for exemptions from the adjuster licensing requirements. The Respondent did not claim any exemption under those provisions but rather argued that he was not acting as a public adjuster.

Catalozzi gave Desmarais his business card. Exhibit 16. The parties argued over the significance of this card. It stated the company is a “full service estimating & contracting company” for “building projects” and “insurance property losses.” It also stated about the company, “we as licensed contractors and estimators are hired by the home or business owners to estimate and calculate current market values . . . the cost of reconstruction when an insurance property loss occurs.” It continued, “in our continuing commitment to provide a . . . complete service . . . also offers an affordable . . . construction services.” It then states, “Ralph Catalozzi” and “licensed & insured” and “R.I. No. 1638.”

The Respondent is registered as a contractor. R.I. Gen. Laws § 5-65-7 requires contractors to have insurance. In addition, R.I. Gen. Laws § 5-65-3(l) requires that in all advertisements, the registration number of each contractor shall appear. Further, R.I. Gen. Laws § 5-65-3(l)(ii) provides that the use of the word “license” (rather than registration) in any advertising when registered may result in the imposition of fines. The business card referred to being licensed “contractors and estimators,” neither of which type of license exists in Rhode Island. The card did not explain to what “R.I. No.” refers, e.g. which license (or registration).

The Respondent entered into an “authorization and direction of payment” with Desmarais on August 4, 2015<sup>6</sup> in which it was agreed that the Respondent would be her “true and lawful Attorney-in-Fact/Estimator for . . . [her] behalf . . . and prepare a Report of Damages for . . . [her] to forward to . . . [her] insurance adjust/carrier as part of . . . [her] insurance claim responsibilities.” Exhibit 10. While the agreement does not reference the term adjuster or public adjuster, it designated Catalozzi as an “attorney-in-fact” for Desmarais. The definition of attorney-in-fact in *Black’s Law Dictionary* 9<sup>th</sup> Ed. (2004) refers to the first definition under an “attorney” which is

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<sup>6</sup> See footnote Four (4).



“[s]trictly, one who is designated to transact business for another; a legal agent – also termed *attorney-in-fact*.” In addition, “attorney-in-fact” is defined as “an attorney who may or may not be a lawyer who is given written authority to act on another’s behalf especially by a power of attorney”<sup>7</sup> or “someone specifically named by another through a written ‘power of attorney’ to act for that person in the conduct of the appointer’s business.”<sup>8</sup>

The Respondent and/or his office contacted LM on behalf of Desmarais many times as evidenced by Catalozzi’s testimony and LM’s claim file. Exhibit 13.<sup>9</sup> On August 13, 2015, LM told Desmarais that it needed a letter of representation from her and then it can contact the “PA” to set up on appointment. LM’s claim file indicated that the Respondent was informed on August 19, 2015 that it needed a “LOR” (letter of representation) and it would be sending the “POL” (proof of loss) and that its adjuster met with the Respondent and he agreed to the LM’s price (September 4, 2015). Catalozzi forwarded Exhibit 10 to Kinscherf on September 2, 2015. Exhibit 14A. The claim file noted on October 10, 2015 that LM issued more money for fencing based on discussion with Catalozzi. The claim file documented more than 15 times that Catalozzi or Maria spoke to or were contacted by LM or messages were left by them for LM.

On September 15, 2015, Catalozzi sent an inventory list of Desmarais’ property to LM with supporting invoices. He told LM that it had been prepared by Desmarais. She testified that she forwarded the list to Respondent. The list sent by Catalozzi included items such as groceries, porch rug, air conditioner, and an area rug. Exhibit 14D. Later in October, Catalozzi emailed photographs of a claimed item to LM. Exhibit 14L. In October, 2015, the claim file noted that Catalozzi cannot document the porch rugs (for proof of loss) so LM used Home Depot and internet

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<sup>7</sup> <https://www.merriam-webster.com/legal/attorney-in-fact>.

<sup>8</sup> <https://legal-dictionary.thefreedictionary.com/attorney-in-fact>.

<sup>9</sup> Exhibit 13, LM’s claim file for Desmarais is ordered sealed.

pricing and Desmarais called about the rug and said further documents on the rug would be sent to LM by Catalozzi. Exhibits 13 and 32 (texts between Respondent's office and Desmarais to sign proof of loss for the office to submit to LM and that Catalozzi is sending contents' packet to LM).

LM issued a check of \$5,618.92 to Respondent for Desmarais' personal property. The claim file noted that the check was issued for personal property and sent to Maria in the Respondent's office. Exhibit 13, p. 18. A check for "contents rebate" was issued by Respondent to Desmarais for \$5,057.03. Ten (10) percent of \$5,618.92 is \$561.89. Subtracting \$561.89 from \$5,618.92 equals \$5,057.03, the amount of the check issued by Respondent to Desmarais. Respondent's Exhibit Two (2) (spreadsheet and copy of the checks). Another check was issued by LM for \$1,645.09 for "appurtenant structures" and "personal property." The Respondent then subtracted 10% of that check and forwarded a check for \$1,480.59 to Desmarais for "contents refund." Respondent's Exhibit Two (2).

Kim Catalozzi, Catalozzi's daughter, contacted LM and identified the company as Desmarais' public adjusters. Catalozzi testified that this was a one-time mistake.<sup>10</sup>

During the LM claim procedure, there was an issue with Desmarais' ex-husband's name still being on the house that complicated the issuance of the insurance checks. Catalozzi forwarded documents to LM regarding this issue. Exhibit 14F. Catalozzi contacted Desmarais' mortgage company so that it could "properly process my client, Robin Desmarais's Insurance Property Loss Settlement check" and forwarded to the company documents such as an endorsed check, contract with Desmarais, payment procedure, and third-party authorization. He then asked the mortgage company to send the first disbursement check to FCE. Exhibit 15. The mortgage company issued a check to Desmarais and FCE for \$40,000 (Exhibit 29) as it held back money

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<sup>10</sup> Exhibit Two (2) was a recording of Kim Catalozzi calling LM for a different client and telling LM that client had hired them to do public adjusting work.

(Exhibit 18). In his “settlement” offer to Desmarais, Catalozzi suggested that his time fixing the problem with the ex-husband’s name was worth \$600 for “banking fees.”

On November 27, 2015, Respondent and Desmarais entered into a contract for the Respondent to perform reconstruction work on Desmarais’ property for damage resulting from the wind and water loss and that the Respondent would be paid \$56,716.49. Exhibits 22 and 32.<sup>11</sup>

In his demand letter to Desmarais prior to filing suit, Catalozzi described his work after providing an estimate as being he “subsequently worked with your insurance company’s claim representative to reach an acceptable insurance property claim settlement to restore your home to whole.” Exhibit 20. When the Respondent (as Future Contracting and Estimators, LLC) sued Desmarais, the complaint stated it was hired to reach an acceptable insurance settlement with LM and to perform repair work. Exhibit One (1). Catalozzi testified under cross-examination that he performed the work as described in the complaint but then on re-direct examination, he testified that his complaint was not a verified complaint so he rejected his own lawsuit’s description of what services he performed for Desmarais.

Desmarais testified that Catalozzi said he should contact her insurance company for her as this was his business. Catalozzi testified he only needed the policy to call in the claim and he told Desmarais that he was an estimator and would do a structural estimate. Clearly, his own actions show that he did more than prepare a structural estimate. Thus, his testimony that he told Desmarais his role was limited to a structural estimate is not credible compared to her testimony regarding what he said to her and his own actions after their meeting on August 4, 2015.<sup>12</sup>

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<sup>11</sup> There are two (2) versions of the November 27, 2015 contract. Exhibits 22 and 33 and Respondent’s Exhibit Three (3). Desmarais’ signature is affixed differently and the notary signature by Kim Catalozzi is placed differently. The Respondent testified there were two (2) versions but Desmarais did not testify she signed two (2) different contracts.

<sup>12</sup> Desmarais’ testimony regarding Catalozzi’s representations to her was consistent with her initial complaint filed with the Department in which she described her interactions with Catalozzi and how he described his work on her behalf. Exhibit 17.

**b. Whether Respondent's Actions Constituted Adjusting**

The Respondent argued that he was acting as an estimator and all he did was defend his estimate to the insurance company. It is undisputed that Desmarais suffered damage and property loss due to a storm and held a policy of insurance with LM. It undisputed that Desmarais received a settlement from LM. She received checks for property damage and for damaged personal property that went through the Respondent.

In terms of the statutory definition, the key question is whether the Respondent acted or aided Demarais in negotiating or effecting a settlement for loss or damage or investigated or adjusted losses or advised Desmarais about first-party claims for losses or damages arising out policies of insurance for compensation or any other thing of value on Desmarais' behalf.

As stated above, if a statute is clear and unambiguous, the words of the statute are to be given their plain and ordinary meanings. In *Roadway Express, Inc. v. Rhode Island Commission for Human Rights*, 416 A.2d 673 (R.I. 1980), the Court relied on a dictionary definition in applying the "ordinary meaning" of "must." *Id.*, at 674. As the Court has found, "[i]n a situation in which a statute does not define a word, courts often apply the common meaning given, as given by a recognized dictionary." *Defenders of Animals, Inc.*, at 543.

Negotiate is defined as "to confer with another so as to arrive at the settlement of some matter"<sup>13</sup> or "to deal or bargain with another or others, as in the preparation of a treaty or contract or in preliminaries to a business deal"<sup>14</sup> or "to confer with another or others in order to come to terms or reach an agreement."<sup>15</sup> Effect (verb - effecting) is defined as "to cause to come into

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<sup>13</sup> <https://www.merriam-webster.com/dictionary/negotiate>.

<sup>14</sup> <https://www.dictionary.com/browse/negotiate>.

<sup>15</sup> <https://www.thefreedictionary.com/negotiate>.

being”<sup>16</sup> or “to produce as an effect; bring about; accomplish; make happen”<sup>17</sup> or “to bring about; make happen; cause or accomplish.”<sup>18</sup>

While Catalozzi met with Kinscherf to look at the property damage to discuss it, Catalozzi/FCE did much more than that. The Respondent represented to LM that it was doing public adjusting work for Desmarais. The Respondent purported to act as Desmarais’ “attorney-in-fact.” As an “attorney-in-fact,” Catalozzi was a legal representative for Desmarais and/or someone with written authority to work on behalf of Desmarais. Such a scope of responsibility represented more than just defending his estimate for repair work. The Respondent contacted LM regarding Desmarais’ claims and provided claims for the contents and supporting documents and spoke about those items (e.g. rug) with LM. The Respondent contacted the mortgage company regarding disbursements and provided information regarding Desmarais in order to have the check issued. The Respondent gave advice to Desmarais on how to make a claim (do not be too high; can always supplement) and put in the claim to LM on her behalf for her contents. Indeed, the Respondent took 10% from LM’s check for the contents which coincidentally is the highest fee allowed by a licensed public adjuster.<sup>19</sup> Such activity regarding Desmarais’ personal property is more than just defending an estimate for repair work to fix Desmarais’ storm damage.

The Respondent conferred with LM to reach a settlement for Desmarais. The Respondent brought about the settlement and payment for the contents and house damage. Not only did the Respondent receive compensation for the contents in the form of the 10% fee, he received money from the settlement check as evidenced by his estimating fee detailed in Exhibit 18. His estimating fee of \$5,200 (plus the \$600 banking fee) represents approximately 10% of the total loss value

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<sup>16</sup> <https://www.merriam-webster.com/dictionary/effect>.

<sup>17</sup> <https://www.dictionary.com/browse/effect>.

<sup>18</sup> <https://www.thefreedictionary.com/effect>.

<sup>19</sup> See the Department’s Insurance Adjuster Regulation, 230-RICR-20-50-4.11(A)(3).

which was approximately \$56,000.<sup>20</sup>

Along with dealing and conferring with LM to bring into effect a settlement for Desmarais, the Respondent implied he was acting as an adjuster. He might not have called himself an adjuster but he used the word “attorney-in-fact” and advised Desmarais that he would speak to the insurance company on her behalf so she could get a better settlement and he presented her with a vaguely worded business card implying he was licensed as an estimator and contractor. The card had a “number” on it that looks like a license number (and indeed most likely is his registration number as a contractor) but the card called him licensed and insured without specifying what he was licensed as in Rhode Island - when there are no licenses for estimators or contractors - and describes the company as being a full service estimator for insurance losses.

An estimator prepares an estimate for the scope and pricing of a job as compared to an adjuster who determines the benefits under the insurance contract and has the responsibility to a client for the client to receive the benefits available under an insurance contract. Indeed, Catalozzi’s own lawsuit described his work for Desmarais as obtaining her a settlement. While Catalozzi disavowed that description on re-direct examination, the fact is his own actions – even if he insists on saying he is an estimator – show that was what he was doing for Desmarais.

Based on foregoing, the Respondent was acting as an unlicensed public adjuster in violation of R.I. Gen. Laws § 27-10-1 *et seq.*

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<sup>20</sup> Catalozzi testified in deposition that the contract was for what LM allotted. See Exhibit 30, p. 52. LM issued a check to the mortgage company for \$56,716.49 (Exhibit 13, p. 18) which is the amount of the contract between Catalozzi and Desmarais.

## G. Sanctions

R.I. Gen. Laws § 27-10-11 provides as follows:

Penalty for violations. Any person who acts as an adjuster, other than for life and accident and health insurance, without holding a current, valid license as provided in this chapter, or shall act in any manner in the negotiation of any insurance claim agreement in violation of any provision of this chapter shall be punished by an order to cease and desist such practices and fine or other penalty in accordance with the standards of § 42-14-16.

R.I. Gen. Laws § 42-14-16 provides in part as follows:<sup>21</sup>

Insurance – Administrative penalties. (a) Whenever the director, or his or her designee, shall have cause to believe that a violation of title 27 and/or chapter 14, 14.5, 62, or 128.1 of title 42 or the regulations promulgated thereunder has occurred by a licensee, or any person or entity conducting any activities requiring licensure under title 27, the director or his or her designee may, in accordance with the requirements of the administrative procedures act, chapter 35 of this title:

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(2) Levy an administrative penalty in an amount not less than one hundred dollars (\$100) nor more than fifty thousand dollars (\$50,000);

(3) Order the violator to cease such actions;

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(5) Any combination of the above penalties.

Section 2.16 of the Hearing Regulation provides as follows:

### Penalties

A. In determining the appropriate penalty to impose on a Party found to be in violation of a statute(s) or regulation(s), the Hearing Officer shall look to past precedence of the Department for guidance and may consider any mitigating or aggravating circumstances.

1. Mitigating circumstances may include, but shall not be limited to, the following: the Party's licensing history, i.e. the absence of prior disciplinary actions; the Party's acceptance of responsibility for any violations; the Party's cooperation with the Department; and the Party's willingness to give a full, trustworthy, honest explanation of the matter at issue.

2. Aggravating circumstances may include, but shall not be limited to, the following: the Party's prior disciplinary history; the Party's lack of cooperation and/or candor with the Department; the seriousness of the violation; whether the Party's act undermines the regulatory scheme at issue; whether there has been harm to the public; and whether the Party's act demonstrates dishonesty, untrustworthiness, or incompetency.

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<sup>21</sup> This statute has been amended since the issuance of the Order to Show Cause was issued but the amendment did not change the provision regarding penalties for violations of Title 27.

B. The finding of mitigating factors will not necessarily lead to a reduction in the penalty imposed if the circumstances of the violations found by the Hearing Officer are such that they do not warrant a reduction in penalty.

The Department argued that the Respondent should be ordered to cease and desist from acting as unlicensed public adjuster and argued that aggravating circumstances support the imposition of the maximum penalty of \$50,000. The Department argued that the Respondent has many years of experience and has had several complaints filed against him with the Department and despite previously being informed regarding what he can and cannot do without a public adjuster license, he continues to act as an unlicensed adjuster. The Department argued the Respondent provided Desmarais with inaccurate advice and while there is a dispute over the amount of money he owes Desmarais, he owes her money.<sup>22 23</sup> As the Respondent argued that there was no unlicensed adjusting activity, he objected to any sanction but argued the requested \$50,000 was exorbitant and was merely serving to force a resolution to what was a civil dispute between Desmarais and Catalozzi that should be left to the courts.

In reviewing the Respondent's actions, there are no mitigating circumstances except that the Respondent does not have any prior formal disciplinary sanctions. However, the Respondent has been the subject of numerous complaints about unlicensed adjusting going back to at least 2005. For example, the 2013 email from the Department to Catalozzi summarized earlier complaints against him from 2005 and stated that previously, it was agreed he would not act as an unlicensed public adjuster.<sup>24</sup> As a result of these complaints, Catalozzi was previously informed

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<sup>22</sup> The Department also argued that the Respondent misrepresented the status of his licensing in Florida. At hearing, Catalozzi acknowledged that he was not licensed as a public adjuster in Florida and that a Florida license would not be valid in Rhode Island. However, in his April 13, 2018 deposition in the civil suit with Desmarais, he testified that he understood that if the license was good in Florida, it was good in Rhode Island. Exhibit 30, p. 38 (deposition).

<sup>23</sup> Catalozzi offered a refund to Desmarais of about \$17,000. Exhibit 18.

<sup>24</sup> Exhibit 12, 2013 Department email to Catalozzi, referenced a 2005 complaint against him that was resolved with an attorney named Borges. Exhibit 33, an internal Department email, included a 2007 email discussing a complaint filed in 2006 against Catalozzi and other complaints that were being discussed with an attorney named Borges.



by the Department about what he cannot do but he continued to violate the licensing statute and at hearing refused to accept any responsibility for his actions and claimed that he was merely defending his estimate (despite evidence to the contrary).

In terms of aggravating circumstances, the Respondent has a long history with the Department regarding unlicensed activities even if the Respondent never had any formal discipline after the many complaints filed against the Respondent. Catalozzi had an informal resolution with the Department by which Respondent agreed not to engage in unlicensed adjusting. Exhibits 12 and 33. His actions undermine the regulatory scheme to license and regulate the behavior of public adjusters by statute and regulation by engaging in unlicensed activity.<sup>25</sup> Catalozzi's unlicensed activities cause harm to the public by causing people to rely on him to perform a job for which he is not qualified. He is not a licensed public adjuster. More specifically, Desmarais suffered harm by receiving inaccurate advice and is currently owed money by the Respondent. The Respondent has demonstrated dishonesty by misrepresenting himself to LM and to Desmarais (verbally, the business card, and interactions with LM, etc.) and countenancing fraudulent notarizing of a contract (Exhibit 10). Catalozzi demonstrated dishonesty by claiming that if Desmarais hired him as a contractor, he would waive his fee but instead deducted 10% from the contents' checks and money for his contractor work. His explanation for his two (2) contracts did not make any sense in that there were backwards' initials for Desmarais (DR instead of RD) on some of the pages (Exhibit 22) and Desmarais did not testify to signing two (2) contracts.

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<sup>25</sup> R.I. Gen. Laws § 27-10-1 provides as follows:

Purpose and scope. This chapter governs the qualifications and procedures for the licensing of: (1) Public adjusters; (2) Company adjusters; and (3) Independent adjusters. It specifies the duties of, and restrictions on, public, company, and independent adjusters. The restrictions on public adjusters include limiting their licensure to assisting insureds in first-party claims.

There are many aggravating circumstances in considering the appropriate administrative penalty to impose on the Respondent. For over 10 years, Catalozzi has been in contact with the Department regarding his continuous unlicensed adjusting activity. This is not the first or second time his unlicensed activity has come to the Department's attention or that the Department addressed with him that his actions constitute unlicensed adjusting and while he argued that his activity solely was to defend his estimate, his actions show otherwise. In considering the appropriate penalty, there are numerous aggravating circumstances and no mitigating circumstances except for the lack of a formal prior sanction. Because of the numerous aggravating factors and lack of mitigating factors but since this is the first formal sanction against Respondent, an administrative penalty of \$25,000 (rather than the maximum administrative penalty) should be imposed on the Respondent. In addition, the Respondent is ordered to cease and desist from engaging in any activity requiring licensing under R.I. Gen. Laws § 27-10-1 *et seq.*

## **VII. FINDINGS OF FACT**

1. On or about July 27, 2016, the Order to Show Cause was issued to the Respondent by the Department.
2. A hearing was held on October 4 and 18, November 20 and 26, and December 3, 2018. Briefs were timely filed by February 22, 2019.
3. Desmarais suffered damage and property loss due to a storm and held a policy of insurance with LM and received a settlement from LM.
4. The Respondent negotiated and effected a settlement for loss or damage and advised an insured (Desmarais) about first-party claims for losses or damages arising out policies of insurance for compensation or any other thing of value on behalf of an insured (Desmarais).
5. The facts contained in Section IV and VI are reincorporated by reference herein.

**VIII. CONCLUSIONS OF LAW**

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 27-10-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and the Hearing Regulation.

2. The Respondent violated R.I. Gen. Laws § 27-10-1 *et seq.* by engaging in unlicensed public adjusting as defined by R.I. Gen. Laws § 27-10-1.1(a).

**IX. RECOMMENDATION**

Based on the foregoing, pursuant to R.I. Gen. Laws § 27-10-1 *et seq.* and R.I. Gen. Laws § 42-14-16, the undersigned recommends that the Respondent be ordered to cease and desist from engaging in any activity requiring licensing under R.I. Gen. Laws § 27-10-1 *et seq.* and that the Respondent pay an administrative penalty of \$25,000.<sup>26</sup>

Dated: April 12, 2019

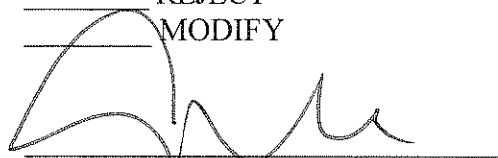
  
Catherine R. Warren, Esquire  
Hearing Officer

**ORDER**

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

ADOPT  
 REJECT  
 MODIFY

Dated: 4/15/19

  
Elizabeth Tanner, Esquire  
Director


<sup>26</sup> The administrative penalty shall be due to the Department on the 31<sup>st</sup> day after the execution of this decision.

NOTICE OF APPELLATE RIGHTS

THIS ORDER CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify that on this 16<sup>th</sup> day of April, 2019, that a copy of the within decision was sent by first class mail, postage prepaid and electronic delivery to Seth A. Perlmutter, Esquire, and Gabrielle R. Perlmutter, Esquire, Perlmutter Law Offices, 949 Park Avenue, Cranston, R.I. 02910 and by electronic delivery to Sara Tindall-Woodman, Esquire, Amy Stewart, Esquire, and Elizabeth Kelleher Dwyer, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.

  
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