

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner)
of Banking and Insurance, State)
of New Jersey, to fine, suspend)
and/or revoke the insurance)
producer licenses of Angela)
Baldwin, Reference No. 9475713;)
The Baldwin Agency, LLC,)
Reference No. 129217; Marc A.)
Berg, Reference No. 1186800;)
Pinkham Agency, Inc., Reference)
No. 1010630; and BFA of New)
York, Inc., Reference No.)
1534497)

ORDER
TO
SHOW CAUSE

TO: Angela Baldwin
25 Kirk Street
West Orange, NJ 07052-5905

The Baldwin Agency
c/o Angela Baldwin
25 Kirk Street
West Orange, NJ 07052-5905

Marc A. Berg
1487 Andrew Place
Wantagh, NY 11793-2958

Pinkham Agency
c/o Marc A. Berg
40 Commerce Place, Suite 100
Hicksville, NY 11801

BFA of New York, Inc.
c/o Marc A. Berg
40 Commerce Place, Suite 100
Hicksville, NY 11801

This matter, having been opened by the Commissioner of Banking and Insurance ("Commissioner"), State of New Jersey, upon information that Angela Baldwin ("Baldwin"), The Baldwin Agency, LLC ("BA"), Marc A. Berg ("Berg"), Pinkham Agency, Inc. ("Pinkham"), and BFA of New York, Inc. ("BFA") (collectively "Respondents") may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Baldwin was currently licensed as a resident insurance producer pursuant to N.J.S.A. 17:22A-32 until her license expired on August 31, 2015; and

WHEREAS, BA was licensed as a resident business entity insurance producer pursuant to N.J.S.A. 17:22A-32, with Baldwin listed as its designated responsible licensed producer ("DRLP"), until its license expired on May 31, 2014; and

WHEREAS, Berg is currently licensed as a nonresident insurance producer pursuant to N.J.S.A. 17:22A-34; and

WHEREAS, Pinkham is currently licensed as a nonresident business entity insurance producer pursuant to N.J.S.A. 17:22A-34, with Berg listed as the DRLP; and

WHEREAS, BFA is currently licensed as a nonresident business entity insurance producer pursuant to N.J.S.A. 17:22A-34, with Berg listed as the DRLP; and

WHEREAS, Respondents are subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001 ("Producer Act"), N.J.S.A. 17:22A-26, et seq., and the insurance producer licensing regulations, N.J.A.C. 11:17-1.1 et seq., N.J.A.C. 11:17A-1.1 et seq., N.J.A.C. 11:17B-1.1 et seq. and N.J.A.C. 11:17C-1.1 et seq.; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40d and N.J.A.C. 11:17-2.15(c), allowing a license to expire shall not void any disciplinary proceeding against the licensee, nor prevent imposition of any penalty, ordered restitution, or costs; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(2), an insurance producer shall not violate any insurance laws, regulations, subpoenas or orders of the Commissioner or of another state's insurance regulator; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(8), an insurance producer shall not use fraudulent, coercive or dishonest business practices, or demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business in this state or elsewhere; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(12), an insurance producer shall not knowingly accept insurance business from an unlicensed insurance producer; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(17), an insurance producer shall not knowingly facilitate or assist another person in violating any insurance laws; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40d, the Commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by the Producer Act and Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes against any person who is under investigation for or charged with a violation of the Producer Act or Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes even if the person's license or registration has been surrendered or has lapsed by operation of law; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45c, any person who violates any provision of the Producer Act shall be liable to a penalty not exceeding \$5,000 for the first offense and not exceeding \$10,000 for each subsequent offense; additionally, the Commissioner may order restitution of moneys owed any person and reimbursement of the costs of investigation and prosecution; and

WHEREAS, pursuant to N.J.A.C. 11:17A-1.3(a), no person

shall act as an insurance producer or receive any commission, brokerage fee, compensation or other consideration for services rendered as an insurance producer, without first obtaining a license from the Commissioner; and

WHEREAS, pursuant to N.J.A.C. 11:17A-1.3(b), any person who solicits, negotiates or sells contracts of insurance in New Jersey shall be considered to be transacting the business of insurance in New Jersey so as to require licensure as an insurance producer; and

WHEREAS, pursuant to N.J.A.C. 11:17A-1.3(c), engaging in a single act or transaction of the business of an insurance producer, or holding oneself out to the public or an insurance producer as being so engaged, shall be sufficient proof of engaging in the business of an insurance producer as to require licensure; and

WHEREAS, pursuant to N.J.A.C. 11:17A-1.3(d), no licensed insurance producer shall permit or allow any unlicensed person to transact the business of an insurance producer; and

WHEREAS, pursuant to N.J.A.C. 11:17A-1.4(a), no person shall solicit, negotiate or sell an insurance contract in New Jersey unless he or she is a licensed insurance producer; and

WHEREAS, pursuant to N.J.A.C. 11:17B-3.1(a), insurance

producers selling, soliciting or negotiating commercial lines insurance may charge and receive fees for services rendered to an insured or prospective insured subject to N.J.A.C. 11:17B-3.1(b) to (g); and

WHEREAS, pursuant to N.J.A.C. 11:17B-3.1(b), any insurance producer charging a fee to an insured or prospective insured shall first obtain from the insured or prospective insured a written agreement, which shall be separate and apart from all other agreements and applications, and shall contain the following provisions and no other provisions: 1. A clear statement of the amount of the fee to be charged and the nature of the service to be provided therefor; 2. A statement that such fees are not a part of the premium charged by the insurance company and that such fees can be charged only if the insured or prospective insured so consents in writing; 3. A clear statement as to whether a commission will be received from the purchase of insurance; and 4. The signature of the insured or prospective insured and the licensed insurance producer and the date of execution of the agreement; and

WHEREAS, pursuant to N.J.A.C. 11:17B-3.2(a)1, an insurance producer may charge a fee for services rendered in the sale or service of personal lines property/casualty or, where the

producer is the originating or retail producer, in the sale or service of personal lines surplus lines insurance, provided a service fee for any one policy shall not exceed \$20.00; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.3(a), an insurance producer shall establish and maintain a trust account into which shall be deposited cash, checks and other instruments payable to the insurance producer under certain circumstances, including when an insurance producer deposits any collected premiums into a financial institution account or other investment or otherwise uses the premiums, even though the premiums are remitted within five business days; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.4(a), each insurance producer shall issue a receipt for each premium for any payment, premium deposit or installment payment which is submitted by personal delivery or when a receipt is requested, and shall maintain a copy of each receipt issued; and the receipt shall be furnished at the time payment is tendered; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.4(b), each receipt and receipt book maintained by an insurance producer shall: 1. Be sequentially prenumbered or otherwise provide documentation of the sequence in which the receipts are issued: 2. Be clearly signed by the insurance producer or his or her authorized

employee, and the name of the insurance producer shall be typed or legibly printed below the signature; 3. Indicate the name of the insured; 4. Indicate the name of the insurance company when known, or the name of the residual market mechanism or other insurance producer, if applicable; 5. Indicate the name, address and telephone number of the insurance agency; 6. Indicate the date and type of coverage; 7. Indicate the date of transaction; 8. Indicate the purpose of the payment if it is other than a premium payment; and 9. Indicate the amount of remittance; and

COUNT 1

IT FURTHER APPEARING that at all relevant times, Baldwin was a DRLP and CEO/President of BA; and

IT APPEARING that on or about October 31, 2011 and on August 28, 2012, BFA entered into a producer agreement with BA; and

IT FURTHER APPEARING that the two producer agreements had the following provision: "[BA] does not have any right or authority to bind or accept any risk on behalf of BFA or its principals without first obtaining authority from a duly authorized representative of BFA;" and

IT FURTHER APPEARING that the two producer agreements had the following provision: "It is the sole responsibility of [BA]

to guarantee prompt payment of all earned premiums to BFA . . . such charges are fully earned on binding and [BA] agrees to pay such charges in full to BFA; and

IT FURTHER APPEARING that at all relevant times, BFA was a licensed insurance producer in New York State; and

IT FURTHER APPEARING that BFA first obtained a New Jersey insurance producer license on October 15, 2013; and

IT FURTHER APPEARING that before BFA was licensed in New Jersey, Baldwin and/or BA placed at least seven (7) insurance contracts for New Jersey insureds through BFA; and

IT FURTHER APPEARING that when receiving deposits of insurance premiums from New Jersey insureds for their insurance policies, BA and/or Baldwin sent these deposit proceeds to BFA; and

IT FURTHER APPEARING that before BFA was licensed as an insurance producer in New Jersey, BFA received at least seven (7) deposits of insurance premiums from BA for insurance policies procured for New Jersey insureds; and

IT FURTHER APPEARING that BFA remitted commission premiums to Baldwin and/or BA for the insurance policies that BA procured for New Jersey insureds through BFA; and

IT FURTHER APPEARING that by placing at least seven (7)

insurance applications for New Jersey insureds through BFA before it was licensed to conduct insurance business in New Jersey, Baldwin and BA violated N.J.S.A. 17:22A-40a(2), (8), (12), and (17), and N.J.A.C. 11:17A-1.3(d); and

IT FURTHER APPEARING that each act of placing insurance business through BFA before it was licensed in New Jersey constitutes a separate violation of the Producer Act; and

COUNT 2

IT FURTHER APPEARING that on or about March 1, 2013, Baldwin and/or BA assisted Magnolia Supermarket ("Magnolia"), a New Jersey domiciled corporation, in renewing its business owners insurance policy and on or about March 20, 2013, Baldwin and/or BA assisted Magnolia in procuring a workers' compensation insurance policy; and

IT FURTHER APPEARING that at no time did Magnolia and BA have a signed written fee agreement; and

IT FURTHER APPEARING that despite having no such written fee agreement, BA and/or Baldwin charged Magnolia a \$250 service fee for each of the two insurance policies Magnolia purchased; and

IT FURTHER APPEARING that by charging Magnolia a fee without a written and signed fee agreement, Baldwin and BA

violated N.J.S.A. 17:22A-40a(2) and (8), and N.J.A.C. 11:17B-3.1(a) and (b); and

COUNT 3

IT FURTHER APPEARING that at no time did BA maintain a business trust account for premiums collected from the insureds for their insurance policies; and

IT FURTHER APPEARING that Baldwin deposited said insurance premiums, including premiums paid by Magnolia, to the BA business non-trust account; and

IT FURTHER APPEARING that by failing to maintain a business trust account for collected premiums, Baldwin and BA violated N.J.S.A. 17:22A-40a(2) and (8), and N.J.A.C. 11:17C-2.3(a); and

IT FURTHER APPEARING that each act of deposit of insurance premiums in a non-trust account constitutes a separate violation of the Producer Act; and

COUNT 4

IT FURTHER APPEARING that when receiving insurance premiums from insureds for their insurance policies, BA and/or Baldwin issued receipts that did not contain the typed name of the insurance producer, the name of the insurance company or the name, address and telephone number of the insurance agency, in violation of N.J.S.A. 17:22A-40a(2) and (8), and N.J.A.C.

11:17C-2.4(b); and

IT FURTHER APPEARING that each act of issuance of a non-compliant receipt constitutes a separate violation of the Producer Act; and

COUNT 5

IT FURTHER APPEARING that at all relevant times Berg was the DRLP and CEO of both Pinkham and BFA; and

IT FURTHER APPEARING that prior to BFA obtaining an insurance producer license in New Jersey on October 15, 2013, BFA entered into at least 84 insurance producer agreements with different licensed New Jersey insurance producers; and

IT FURTHER APPEARING that terms and conditions of said 84 insurance producer agreements were identical to the terms and conditions of the agreement between BFA and BA described in Count 1 above; and

IT FURTHER APPEARING that BFA processed insurance applications and collected fees procured by the New Jersey insurance producers with which BFA entered into producer agreements, as described above; and

IT FURTHER APPEARING that before BFA was licensed in New Jersey to engage in insurance producer business, BFA charged New Jersey insureds a service fee of \$25.00 for each personal lines

insurance policy processed through BFA; and

IT FURTHER APPEARING that before BFA was licensed in New Jersey to engage in insurance producer business, BFA processed at least 527 insurance applications for New Jersey residents, collected at least \$1,053,958.59 in premiums from the New Jersey insureds, and paid commissions to New Jersey producers in the aggregate amount of \$115,935.45; and

IT FURTHER APPEARING that by conducting insurance producer business without maintaining a New Jersey license, Berg and BFA violated N.J.S.A. 17:22A-40a(2) and (8), N.J.A.C. 11:17A-1.3(a), (b), and (c) and N.J.A.C. 11:17A-1.4(a); and

IT FURTHER APPEARING that each act of transaction of insurance business in New Jersey without being licensed constitutes a separate violation of the Producer Act; and

COUNT 6

IT FURTHER APPEARING that BFA and/or Pinkham charged at least 103 New Jersey insureds a service fee of \$25.00 for each personal lines insurance product placed in the admitted market and processed through BFA and/or Pinkham, which exceeded the \$20.00 limit for such fees; and

IT FURTHER APPEARING that by charging New Jersey insureds for personal lines insurance policies a service fee in excess of

\$20.00, Berg, BFA and Pinkham violated N.J.S.A. 17:22A-40a(2) and (8), and N.J.A.C. 11:17B-3.2(a)1; and

IT FURTHER APPEARING that each act of charging of excessive service fees constitutes a separate violation of the Producer Act; and

COUNT 7

IT FURTHER APPEARING that BFA and/or Pinkham entered into 103 separate written fee agreements with the New Jersey insureds described above in Count 6; and

IT FURTHER APPEARING that said written fee agreements did not state that the \$25.00 fee was not part of the premium charged by the insurance company; did not state that such fee can only be charged only if the insured or prospective insured consents in writing; lacked a clear statement as to whether a commission will be received from the purchase of insurance; and failed to reflect the signature of the insurance producer; and

IT FURTHER APPEARING that by entering into non-compliant fee agreements, Berg, BFA and Pinkham violated N.J.S.A. 17:22A-40a(2) and (8), and N.J.A.C. 11:17B-3.1(b); and

IT FURTHER APPEARING that each act of entering into a non-compliant fee agreement constitutes a separate violation of the Producer Act; and

NOW, THEREFORE, IT IS on this 1st day of November, 2016,

ORDERED that pursuant to the provisions of N.J.S.A. 17:22A-40a, Respondents shall appear and show cause why their insurance producer licenses shall not be revoked by the Commissioner; and

IT IS FURTHER ORDERED that Respondents appear and show cause why the Commissioner should not assess fines up to \$5,000.00 for the first violation of the Producer Act and not exceeding \$10,000.00 for each subsequent violation of the Producer Act, pursuant to N.J.S.A. 17:22A-45c; and

IT IS FURTHER ORDERED that Respondents appear and show cause why they should not be subject to restitution of moneys owed any person and reimbursement of the costs of investigation and prosecution pursuant to N.J.S.A. 17:22A-45c; and

IT IS PROVIDED that Respondents have the right to request an administrative hearing, to be represented by counsel or other qualified representative, at their own expense, to take testimony, to call or cross-examine witnesses, to have subpoena duces tecum issued and to present evidence or argument if a hearing is requested; and

IT IS FURTHER PROVIDED that, unless a request for a hearing is received within twenty (20) days of the service of this Order

to Show Cause, the right to a hearing in this matter shall be deemed to have been waived by Respondents, and the Commissioner shall dispose of this matter in accordance with law. A hearing may be requested by mailing the request to Virgil Downtin, Chief of Investigations, Department of Banking and Insurance, P.O. Box 329, Trenton, N.J. 08625 or by faxing the request to the Department at (609) 292-5337. The request shall contain:

- (A) The licensee's name, address and daytime telephone number;
- (B) A statement referring to each charge alleged in this Order to Show Cause and identifying any defense intended to be asserted in response to each charge.

Where the defense relies on the facts not contained in the Order to Show Cause, those specific facts must be stated;

- (C) A specific admission or denial of each fact alleged in this Order to Show Cause. Where a Respondent has no specific knowledge regarding a fact alleged in this Order to Show Cause, a statement to that effect must be contained in the hearing request. Allegations of this Order to Show Cause not answered in the manner set forth above shall be deemed to have been admitted;

and

(D) A statement requesting a hearing.



PETER L. HARTT
Director of Insurance