

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 Sarah S. )  
Somsky, Reference No. 8213506, )  
and SKAL & Comp, LLC, Reference )  
No. 1187936 )

ORDER  
TO  
SHOW CAUSE

TO: Sarah S. Somsky  
325 Passaic Avenue  
Lodi, New Jersey 07644

SKAL & Comp, LLC  
c/o Sarah Somsky  
325 Passaic Avenue  
Lodi, New Jersey 07644

This matter, having been opened by the Commissioner of Banking and Insurance ("Commissioner"), State of New Jersey, upon information that Sarah S. Somsky ("Somsky") and SKAL & Comp, LLC ("SKAL") (collectively, "Respondents") may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Somsky is licensed as a resident insurance producer pursuant to N.J.S.A. 17:22A-32; and

WHEREAS, SKAL is licensed as a resident business entity

insurance producer pursuant to N.J.S.A. 17:22A-32, with Somsky listed as the designated responsible licensed producer at all relevant times; and

WHEREAS, Respondents are subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26, et seq., and its implementing regulations;

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

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(4), an insurance producer shall not improperly withhold, misappropriate or convert any monies or properties received in the course of doing insurance business; 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.A.C. 11:17C-2.2(b), all premiums due the insured shall be paid to the insured or credited to the insured's account within five business days after receipt by the

insurance producer from the insurer or other insurance producer or premium finance company; and

WHEREAS, pursuant to N.J.A.C. 11:17A-4.10, an insurance producer acts in a fiduciary capacity in the conduct of his or her insurance business; and

**COUNT 1**

IT APPEARING that on or about February 11, 2010, Respondents brokered a workers' compensation insurance policy for company TCS through New Jersey Casualty Insurance Company ("NJC"), a subsidiary of New Jersey Manufacturers ("NJM"); and

IT FURTHER APPEARING that TCS paid Respondents the premium for the policy and Respondents remitted the premium monies to NJC; and

IT FURTHER APPEARING that, due to a rate classification change ordered by the Compensation Rating and Inspection Bureau ("CRIB") on or about October 2, 2014 with respect to TCS, the premium rate for TCS decreased and TCS was entitled to a premium refund; and

IT FURTHER APPEARING that by check dated December 16, 2014, NJC paid Respondents a refund for TCS in the amount of \$7,721.88, in accordance with the rate change for the TCS policy, which amount represented a return of the premium owed to

TCS, less \$260.12 for Respondents' unearned commission; and

IT FURTHER APPEARING that the check sent to Respondents by NJC was marked Pay to the Order of TCS; and

IT FURTHER APPEARING that Respondents deposited this check on or about December 24, 2014 into their Trust Account at TD Bank; and

IT FURTHER APPEARING that, on or about May 20, 2015, TCS filed a Complaint with the Department alleging that it had not yet received its refund; and

IT FURTHER APPEARING that, Respondents did not return the sum of \$7,982.00 to TCS until on or about October 4, 2015; and

IT FURTHER APPEARING that Respondents failed to timely return the premium refund monies owed to TCS, demonstrating untrustworthiness and financial irresponsibility in the conduct of insurance business and a breach of their fiduciary duty, in violation of N.J.S.A. 17:22A-40a(2), (4), and (8), N.J.A.C. 11:17C-2.2(b) and N.J.A.C. 11:17A-4.10;

#### COUNT 2

IT APPEARING that, on or about September 13, 2011, the Respondents brokered a commercial auto policy for individual BMM, specifically for a 2008 Mercedes Benz automobile; and

IT FURTHER APPEARING that the Respondents were the broker

of record for this transaction, and ProTrans, Inc. ("ProTrans") was the managing underwriter; and

IT FURTHER APPEARING that the Respondents were responsible for collecting and remitting the policy premium; and

IT FURTHER APPEARING that the policy was procured from Ohio Casualty Insurance Company, a subsidiary of Liberty Mutual Insurance; and

IT FURTHER APPEARING that on October 31, 2011, Respondents were billed for the policy premium by Liberty Mutual; and

IT FURTHER APPEARING that BMM financed the cost of the premium through the Insurance Finance Corporation ("IFC"); and

IT FURTHER APPEARING that, on or about December 8, 2011, BMM cancelled the policy; and

IT FURTHER APPEARING that, on or about February 29, 2012, a cancellation credit of \$3,842.92 was processed by Liberty Mutual; and

IT FURTHER APPEARING that, on March 13, 2012 a check for \$3,842.92, representing a refund of the credit balance, was remitted by Liberty Mutual to ProTrans; and

IT FURTHER APPEARING that, on March 28, 2012, a check for \$3,492.39 was issued by ProTrans and sent to Respondents, which represented the return premium balance, less a \$384.20 deduction

for the unearned commission, and adding a \$34.59 credit for the "unused" N.J. PLIGA surcharge; and

IT FURTHER APPEARING that, on May 10, 2012, Respondents issued a check in the amount of \$3,271.39 to IFC, to pay off the loan taken out by BM for the policy premium; and

IT FURTHER APPEARING that Respondents failed to issue a check paying off the loan to IFC for approximately forty-three (43) days after receipt of the funds from ProTrans; and

IT FURTHER APPEARING that Respondents failed to timely pay off the loan amount to IFC on behalf of BMM, demonstrating untrustworthiness and financial irresponsibility in the conduct of insurance business and breach of fiduciary duty, in violation of N.J.S.A. 17:22A-40a(2), (4), and (8), N.J.A.C. 11:17C-2.2(b) and N.J.A.C. 11:17A-4.10.

NOW, THEREFORE, IT IS on this 22<sup>nd</sup> day of November, 2016

ORDERED that Respondents shall appear and show cause why their insurance producer licenses shall not be revoked by the Commissioner pursuant to the provisions of N.J.S.A. 17:22A-40a ; 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 and not exceeding \$10,000.00

for each subsequent violation, pursuant to the provisions of N.J.S.A. 17:22A-45c, due to their failure to comply with New Jersey's insurance laws and regulations; 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 by the Department of Banking and Insurance authorized pursuant to the provisions of 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(s) 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 the 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.

  
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Peter L. Hartt  
Director of Insurance