

ORDER TO SHOW CAUSE NO. -86

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)
Freeway Insurance Services of)
NJ, d/b/a First Americano)
Insurance and Royale Insurance)
Agency, Reference No. 1311688,)
Remberto Perez, Reference No.)
8053047, and Marta Perez,)
Reference No. 9019699)

ORDER TO SHOW CAUSE

TO: Freeway Insurance Services of NJ
d/b/a First Americano Insurance
and Royale Insurance Agency
6913 Bergenline Avenue
Guttenberg, NJ 07093

Remberto Perez
123 Knickerbocker Road
Tenafly, NJ 07670

Marta Perez
123 Knickerbocker Road
Tenafly, NJ 07670

THIS MATTER, having been opened by the Commissioner of
Banking and Insurance ("Commissioner"), State of New Jersey,
upon information that Freeway Insurance Services of NJ, d/b/a

First Americano Insurance and Royale Insurance Agency ("Freeway"), Remberto Perez, and Marta Perez, (collectively "Respondents"), licensed as resident insurance producers pursuant to N.J.S.A. 17:22A-26 et seq., may have violated various provisions of the insurance laws of the State of New Jersey; 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. ("Producer Act"); and

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

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

WHEREAS, pursuant to N.J.A.C. 11:1-24.4, no premium shall differentiate in rates on the basis of payment by credit cards, charge cards, debit cards, or direct account deduction; and

WHEREAS, pursuant to N.J.A.C. 11:17B-3.1(a), insurance producers may charge a fee for services rendered in the sale of personal lines property/casualty or personal lines surplus lines insurance, subject to N.J.A.C. 11:17B-3.2; and

WHEREAS, pursuant to N.J.A.C. 11:17B-3.1(b)1, an insurance producer charging a fee to an insured or prospective insured shall first obtain a written agreement, separate and apart from all other agreements and applications, and shall contain a clear statement of the amount of the fee to be charged and the nature of the service to be provided therefor;

WHEREAS, pursuant to N.J.A.C. 11:17B-3.1(c), any fee charged by an insurance producer shall bear a reasonable relationship to the services provided and shall not be discriminatory; 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 and no service fee for any one policy shall exceed \$20.00; and

WHEREAS, pursuant to N.J.A.C. 11:17B-3.2(a)9, an insurance producer may charge a fee for services rendered in the sale or service of personal lines property/casualty and insurance producers may charge a service fee for new automobile insurance applications, subject to the \$20.00 per policy limit

and the other conditions referenced in N.J.A.C. 11:17B-3.2(a)1 through 8, as reimbursement for out-of-pocket costs in obtaining documents or other materials related to the underwriting process, if: i. The producer retains verifiable proof of the costs incurred; ii. The producer provides copies of all such documents or other materials to the applicant, regardless of whether the costs incurred by the producer in procuring the documents or materials exceeded the \$20.00 limit; and iii. The applicant does not provide the producer with a copy of the underwriting document dated within the previous 90 days; and

WHEREAS, pursuant to N.J.A.C. 11:17B-3.3(a)1. ii, iii and iv, an insurance producer who acts as a motor club representative or receives any compensation, directly or indirectly, or on account of the sale of a motor club service contract purchased in connection with the negotiation or sale of an automobile insurance policy or contract shall obtain at the time of the initial application for the motor club service contract a dated written agreement, separate and apart from any other agreements, signed by both the insurance producer and the insured or prospective insured, stating that the motor club contract is optional, that the motor club membership fee is not related to or included in the automobile insurance premium charge, and cannot lawfully be included in a premium finance

agreement entered into by the insured or prospective insured, and stating the amount of the motor club fee and the automobile insurance premium charge; and

COUNT 1

IT APPEARING that Respondents charged insureds fees in excess of the maximum fee limit dictated by New Jersey regulations; and

IT FURTHER APPEARING that on or about May 14, 2012, insured C.H. obtained automobile insurance through insurance producer Kevin Barrios, an employee of Respondents; and

IT FURTHER APPEARING that C.H. provided Respondents with a money order for \$882.00 as a down payment toward his insurance premium; and

IT FURTHER APPEARING that C.H. discovered that only \$737.00 was applied toward his policy premium, a difference of \$145.00; and

IT FURTHER APPEARING that on or about August 5, 2012, C.H. submitted a complaint to the New Jersey Department of Banking and Insurance ("Department") regarding the misapplication of his down payment; and

IT FURTHER APPEARING that on or about September 7, 2012, Barrios stated to the Department that C.H.'s premium down payment was \$737.00, and that C.H. was also charged \$100.00 for

a motor club membership through National Safe Drivers ("NSD"), a \$20.00 broker's fee, a \$20.00 Motor Vehicle Report ("MVR") fee, and a \$5.00 processing fee; and

IT FURTHER APPEARING that, during the Department's investigation, Respondents informed the Department that Respondents had charged 1,158 insureds fees in excess of \$20.00 during the period of October 2011 to December 2014; and

IT FURTHER APPEARING that Respondents charged at least 1,158 insureds fees in excess of the \$20.00 maximum fee limit, in violation of N.J.S.A. 17:22A-40a(2), (8), and N.J.A.C. 11:17B-3.2(a)1 ; and

COUNT 2

IT FURTHER APPEARING that on or about January 18, 2013, Respondents provided the Department with a copy of its standard service fee agreement; and

IT FURTHER APPEARING that Respondents' standard service fee agreement included a \$20.00 "MVR and/or Clue report" fee, and a \$20.00 "Advice, explanation of benefits and options available" fee; and

IT FURTHER APPEARING that Respondents' standard service fee agreement did not include a \$5.00 processing fee; and

IT FURTHER APPEARING that C.H.'s service fee agreement did not include a \$5.00 processing fee, even though Respondents admit that C.H. was charged a \$5.00 processing fee; and

IT FURTHER APPEARING that on November 29, 2012, Respondents described their \$5.00 fee to the Department as fee collected "for handling, submitting, and prosecuting the application..."; and

IT FURTHER APPEARING that on October 10, 2014, Respondents informed the Department that their \$5.00 processing fee is charged only to insureds that pay their premium using a credit card; and

IT FURTHER APPEARING that Respondents charged C.H. a \$5.00 processing fee even though C.H. did not use a credit card to pay his premium; and

IT FURTHER APPEARING that, during the Department's investigation, Respondents informed the Department that Respondents charged a \$5.00 fee to 10,616 insureds who elected to use a credit card for payment of insurance premiums during the period of October 2011 to December 2014; and

IT FURTHER APPEARING that Respondent charged a credit card and/or "processing" fee to at least 10,616 insureds, in violation of N.J.A.C. 11:1-24.4 and N.J.A.C. 11:17B-3.2(a)1, and without providing the insureds with a separate written fee

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

COUNT 3

IT FURTHER APPEARING that Respondents charged fees to insureds for MVRs that were not reimbursement for actual out-of-pocket expenses; and

IT FURTHER APPEARING that, on or about July 18, 2014, Respondents provided the Department with a list of approximately 1,240 customers who had been charged a \$20.00 MVR fee during the period of January 2014 to May 2014; and

IT FURTHER APPEARING that Respondents also provided the Department with contracts between Respondents and Travelers Insurance Company ("Travelers"), Mercury Insurance Group ("Mercury") and Progressive Insurance Company ("Progressive"); and

IT FURTHER APPEARING that on or about August 9, 2014, the Director of North East Marketing at Mercury informed the Department of Mercury's shared cost program with Respondents; and

IT FURTHER APPEARING that Mercury requires Respondents to write policies for 80% of the customers for whom Mercury runs MVRs; and

IT FURTHER APPEARING that if Respondents fail to do so, Mercury charges Respondents \$9.01 per MVR that is run and not written within 90 days of the initial quote; and

IT FURTHER APPEARING that, on or about August 19, 2014, the New Jersey Product Specialist at Progressive informed the Department about Progressive's shared cost program with Respondents; and

IT FURTHER APPEARING that if a policy is sold within 30 days of Respondents' MVR order, Progressive covers the full cost of the MVR; and

IT FURTHER APPEARING that if the percentage of MVR orders leading to a sale of a policy is at or above 80% for a particular month, Progressive covers the full cost of all Respondents' MVR orders that month. Alternatively, Respondents pay \$12.13 per MVR; and

IT FURTHER APPEARING that, on or about August 27, 2014, the Product Director at Travelers informed the Department of Travelers' shared cost program with Respondents; and

IT FURTHER APPEARING that Respondents may order, from Travelers, 1.5 MVRs per issued driver at no cost to Respondents. The cost per MVR beyond that allowance is \$12.00; and

IT FURTHER APPEARING that Respondents informed the Department, during its investigation, that Respondents charged

MVR fees to 2,315 customers during the period of October 2011 to December 2014, even though Respondents previously reported MVR charges to approximately 1,240 during the five month period of January-May 2014 alone; and

IT FURTHER APPEARING that Respondents have not adequately explained why MVR fees of \$20.00 have been charged to thousands of customers when three of its major insurance carriers charge Respondents little or no cost to run MVRs as part of the underwriting process; and

IT FURTHER APPEARING that Respondents charged a service fee for motor vehicle reports that were not reimbursement for out of pocket costs in obtaining documents or other materials related to the underwriting process, in violation of N.J.S.A. 17:22A-40a(2) and (8), and N.J.A.C. 11:17B-3.2(a)9; and

COUNT 4

IT FURTHER APPEARING that, on or about February 21, 2013, Respondents submitted copies of NSD motor club and/or travel club contracts for 18 randomly selected customers; and

IT FURTHER APPEARING that none of the 18 motor club and/or travel club contracts contained: a signature from an agent/producer, a statement that this feature is optional, or a

description of both the motor club charge and automobile insurance premium insurance charge; and

IT FURTHER APPEARING that NSD informed the Department that the Respondents' commission for selling one of NSD's motor club products is 90% of the suggested retail price; and

IT FURTHER APPEARING that for every NSD motor club or travel club product sold to Respondents' customers for \$100.00, Respondents received a commission of \$90.00; and

IT FURTHER APPEARING that, on or about December 1, 2014, a representative from NSD informed the Department that NSD had received 6,561 motor club and/or travel club service contracts from Respondents during the period of June 1, 2014 through November 15, 2014; and

IT FURTHER APPEARING, that Respondents utilized improper motor club agreements that failed to disclose that the motor club service was optional, that it was not related to or included in the insurance premium charged, failed to indicate the amount of the insurance premium charged and failed to contain the signature of the producer, in violation of N.J.S.A. 17:22A-40a(2) and (8), and N.J.A.C. 11:17B-3.3(a)1. ii, iii, and iv; and

NOW, THEREFORE, IT IS on this *1st* day of *JANUARY*, 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 shall appear and show cause why the Commissioner should not assess fines not exceeding \$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, pursuant to N.J.S.A. 17:22A-45c, Respondents shall appear and show cause why they should not be subject to additional penalties, including restitution to victims and reimbursement of the costs of investigation and prosecution by the Department of Banking and Insurance; 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 and 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 the 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, New Jersey 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. A copy of the request for a hearing shall also be sent to Deputy Attorney General Kevin McGowan at fax number (609) 777-3503. 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 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.



Peter Hartt
Director of Insurance