

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 Greg)
Garbuz, Reference No. 1032769;)
and Elite Insurance & Financial)
Services, Inc., Reference No.)
1295249)

ORDER
TO
SHOW CAUSE

TO: Greg Garbuz
44 Dempsey Ave., Apt. 1
Edgewater, NJ 07020-1271

Elite Insurance &
Financial Services, Inc.
301 Bridge Plaza North
Fort Lee, NJ 07024

and

Greg Garbuz
515 Anderson Ave., Apt. 5C
Cliffside Park, NJ 07010

This matter, having been opened by the Commissioner of the Department of Banking and Insurance ("Department") of the State of New Jersey ("Commissioner"), upon information that Greg Garbuz ("Garbuz") and Elite Insurance & Financial Services, Inc. ("Elite") (collectively, "Respondents") may have violated various provisions of the insurance laws of the State of New Jersey; and

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

WHEREAS, Elite was licensed as a resident business entity insurance producer pursuant to N.J.S.A. 17:22A-32, with Garbuz listed as the designated responsible licensed producer ("DRLP"), until its license expired on May 31, 2015; and

WHEREAS, Respondents are subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001 ("Act"), N.J.S.A. 17:22A-26, et seq., producer licensing regulations, N.J.A.C. 11:17-1 et seq. and regulations governing Insurance Producer Standards of Conduct, 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(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; and

WHEREAS, pursuant to N.J.A.C. 11:17A-4.8, an insurance producer shall reply, in writing, to any inquiry made by the Department relative to the business of insurance within the time requested in said inquiry, or no less than 15 calendar days from the date the inquiry was made or mailed in cases where no response time is given; 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

WHEREAS, pursuant to N.J.A.C. 11:17C-2.1(a) and (b), premium funds shall be held by an insurance producer in a fiduciary capacity and shall not be misappropriated for the insurance producer's own use or illegally withheld, and all such funds shall be segregated and not in any manner commingled with any other funds of the insurance producer; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.2(a) and (b), all premiums due the insurer or insured shall be paid to the insurer or insured, or paid or credited to the insurer or insured's account, within five business days after receipt of the funds by the insurance producer; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.3, an insurance producer shall establish and maintain a trust account, where the producer must deposit cash and checks when holding premiums for more than five business days; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.4(a) and (b), an insurance producer must maintain accurate books, records and/or receipts reflecting all insurance-related transactions, including payment receipts and premium deposits, and shall maintain a copy of each receipt; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.5, an insurance producer must maintain accurate books and records reflecting all insurance-related transactions, and a register of all monies received, deposited, disbursed or withdrawn in connection with an insurance transaction; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40d, the Commissioner shall retain authority to enforce the provisions of and to impose any penalty or remedy authorized by this 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 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

FACTS RELEVANT TO COUNTS 1 THROUGH 5

A. Respondents' Dealings With Best Home Care

IT APPEARING that Respondents procured a commercial general liability insurance policy for Best Home Care, Inc. ("BHC"), through Western World Insurance Group ("WWIG"), which was effective July 11, 2013 with a policy number ending in "_959"; and

IT FURTHER APPEARING BHC cancelled the WWIG policy, with the cancellation effective on January 1, 2014; and

IT FURTHER APPEARING that the cancellation resulted in a premium credit of \$10,327.45, which amount was remitted to BHC's wholesale producer, Brooks Insurance Agency, which in turn remitted the funds to Elite, via check dated March 10, 2014; and

IT FURTHER APPEARING that the amount of \$10,327.45 was deposited and posted to Elite's bank account on March 13, 2014; and

IT FURTHER APPEARING that Elite did not provide a check to BHC for the returned premium until an Elite trust account check, No. 260, dated April 17, 2014 was provided to BHC (the "April 17 Check"); and

IT FURTHER APPEARING that, on April 18, 2014, BHC attempted to deposit the April 17 Check to its account at Bank of America; and

IT FURTHER APPEARING that, on April 21, 2014, Bank of America rejected and returned the April 17 Check for insufficient funds; and

IT FURTHER APPEARING that Respondents then provided BHC with the premium monies it was owed via installment payments, specifically via: (i) \$2,500.00 check dated April 21, 2014; (ii) a \$4,000.00 check dated April 29, 2014; (iii) \$3,327.45 check dated May 2, 2014; and (iv) \$500.00 check dated May 7, 2014;

B. Respondents' Dealings With M.Q.

IT APPEARING that Respondents procured a personal auto policy for M.Q., through IFA Insurance Company ("IFA") which was effective April 16, 2013, with a policy number ending in "_405"; and

IT FURTHER APPEARING that, on or about April 15, 2013, the date of her insurance application, M.Q. provided to Respondents

the requisite down payment of \$353.60, which was remitted by Respondents to IFA to secure the auto policy; and

IT FURTHER APPEARING that, on or about May 24, 2013, M.Q. paid Respondents \$577.00, in cash, for which a receipt was provided, and which amount represented the next two months of premium payments for the auto policy, which amount Respondents were to remit to IFA; and

IT FURTHER APPEARING that IFA cancelled M.Q.'s auto policy, effective July 2, 2013, due to non-payment of premium; and

IT FURTHER APPEARING that Respondents never paid to IFA the \$577.00 in cash received from M.Q. on May 24, 2013; and

IT FURTHER APPEARING that Garbuz recognized that IFA would not reinstate M.Q.'s policy, and thereafter procured an auto policy for M.Q. through GEICO, for which Elite paid the difference between the cost of the GEICO policy and M.Q.'s payments to IFA, had the policy remained in effect; and

IT FURTHER APPEARING that M.Q. re-applied for coverage through IFA in 2014, but was denied coverage due to the non-payment of premium, consistent with N.J.A.C. 11:3-34.4(a)6;

C. Respondents' Dealings With O.G.

IT APPEARING that Respondents procured a personal auto policy for O.G. through IFA, which was effective on or about

April 9, 2013, with a policy number ending in "_406"; and

IT FURTHER APPEARING that, on April 9, 2013, O.G. remitted \$730.00 to Respondents, in cash, as payment of the IFA premium, for which a receipt was provided; and

IT FURTHER APPEARING Respondents never forwarded the premium to IFA, and instead Garbuz made payments toward the premium with his own credit card, specifically payments of: (i) \$150.00 on May 10, 2013; (ii) \$116.00 on June 24, 2013; (iii) \$116.00 on August 22, 2013; (iv) \$116.00 on October 21, 2013; and (v) \$232.00 on December 12, 2013;

COUNT 1

IT APPEARING that by, among other things, failing to return premium monies to insureds, passing checks to clients which were returned for insufficient funds, improperly retaining premium monies for Respondents' own use, failing to forward premium monies to carriers, allowing policies to be cancelled against clients' wishes, and failing to keep accurate books and records, Respondents misappropriated premium funds and failed to keep accurate records, demonstrating dishonesty, incompetence and untrustworthiness, in violation of N.J.S.A. 17:22A-40a(2), (4) and (8), N.J.A.C. 11:17C-2.4(a) and (b) and N.J.A.C. 11:17C-2.5;

COUNT 2

IT APPEARING that by failing to act in a fiduciary capacity in the conduct of their insurance business, Respondents violated N.J.A.C. 11:17A-4.10;

COUNT 3

IT APPEARING that by misusing and misappropriating premium monies which should have been held in trust, and commingling monies which should have been held in trust with Respondents' business and/or personal expenses, Respondents violated N.J.A.C. 11:17C-2.1(a) and (b);

COUNT 4

IT APPEARING that by failing to remit premium funds to the insurer, and premiums due the insured, within five business days of Respondents' receipt of same, Respondents violated N.J.A.C. 11:17C-2.2(a) and (b);

COUNT 5

IT APPEARING that, by causing the trust account check issued to BHC to be returned for insufficient funds, Respondents violated N.J.A.C. 11:17C-2.3; and

COUNT 6

IT APPEARING that, on June 20, 2014, IFA's underwriting manager provided the Department with a list of policies handled by Elite that were cancelled for non-payment of premiums, and a

list of all policies which were issued non-payment cancellation notices for the year 2013; and

IT FURTHER APPEARING that on August 25, 2014, the Department requested information from Respondents regarding the information provided by IFA's underwriting manager, as well as information regarding the facts as previously stated herein; and

IT FURTHER APPEARING that the Department continued to request such information from Respondents through September 2014; and

IT FURTHER APPEARING that, because Respondents failed to respond to the Department's requests, the Department issued a formal subpoena to Respondents on October 15, 2014, pursuant to N.J.S.A. 17:1-16 and N.J.S.A. 17:22A-45a, which required Respondents to comply and produce documents and information to the Department on October 31, 2014; and

IT FURTHER APPEARING that Respondents were duly served with and received notice of the subpoena, because on October 28, 2014 their counsel of record requested an extension of time for Respondents to reply to the Subpoena; and

IT FURTHER APPEARING that the Department denied Respondents' request for an extension of time to respond to the Subpoena, and Respondents never responded, replied or appeared

in response to the Subpoena; and

IT FURTHER APPEARING that Respondents failed to comply with the Department's requests for information, in violation of N.J.S.A. 17:22A-40a(8), N.J.S.A. 17:22A-45c, and N.J.A.C. 11:17A-4.8;

NOW, THEREFORE, IT IS on this 27th day of September, 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 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 Respondents have 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