

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 Sherrica Octavia)
McDonald, Reference No. 1136382, and)
Octavia Global Investment, LLC, D/B/A)
Octavia Bail Bonds, Reference No. 144370.)
_____)

ORDER TO SHOW CAUSE

TO: Sherrica Octavia McDonald
1 Amparo Way
Neptune, NJ 07753-3781

Octavia Global Investment, LLC
d/b/a Octavia Bail Bonds
c/o Sherrica Octavia McDonald
1 Amparo Way
Neptune, NJ 07753-3781

THIS MATTER, having been opened by the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon information that Sherrica Octavia McDonald (“McDonald”), and Octavia Global Investment, LLC d/b/a Octavia Bail Bonds (“OBB”) (collectively, “Respondents”), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, McDonald was formerly licensed as a resident individual insurance producer in the State of New Jersey, pursuant to N.J.S.A. 17:22A-32a, until October 31, 2015, when her license expired; and

WHEREAS, OBB was formerly licensed as a resident business entity insurance producer in the State of New Jersey, pursuant to N.J.S.A. 17:22A-32b, until May 31, 2016, when its license expired; and

WHEREAS, at all relevant times, McDonald was an owner with an ownership interest of 10 percent or more and the Designated Responsible Licensed Producer (“DRLP”) of OBB, and responsible for the insurance related conduct of OBB and its compliance with the insurance laws, rules and regulations of this State, pursuant to N.J.S.A. 17:22A-32b(2) and N.J.A.C. 11:17A-1.6(c); 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 to -48 (“Producer Act”), and the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 to 11:17D-2.8; 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-40a(2), an insurance producer shall not violate any insurance law, 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 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(16), an insurance producer shall not commit any fraudulent act; and

WHEREAS, pursuant to N.J.A.C. 11:17A-4.8, an insurance producer shall reply, in writing, to any inquiry of the New Jersey Department of Banking and Insurance (“Department”) relative to the business of insurance within the time requested in said inquiry, or no later 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), all premium funds shall be held by an insurance producer in a fiduciary capacity and shall not be misappropriated, improperly converted to the insurance producer’s own use, or illegally withheld by the licensee; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.2(a), all premium funds shall be remitted to the insurer or other insurance producer, as applicable, within five business days after receipt of the funds except as otherwise required or provided by any of the following: (1) the insurance producer’s contract with the insurer or written contract with the insured; (2) any controlling statute or administrative rule; or (3) the rules of any residual market mechanism created by or pursuant to any statute; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.3(a)1, 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 when an insurance producer holds any premiums for more than five business days before remitting the premiums to an insurer or other insurance producer, pursuant to N.J.A.C. 11:17C-2.2(a)1 through 3; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.5 (a), an insurance producer shall maintain accurate books and records reflecting all insurance-related transactions in which the insurance producer or his employees take part; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.5(b), each licensee shall maintain a register of all monies received, deposited, disbursed or withdrawn in connection with an insurance transaction; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.5(c), if the premium amount received or disbursed differs with the amount billed, the insurance producer shall prepare a written record of the discrepancy which shall be maintained with the relevant entry in the register for the period of time required by N.J.A.C. 11:17C-2.6(a); and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.5(d), for each disbursement, the number of the check shall be recorded in the register; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.6(a), all required books and records of account, including bank records, shall be maintained for a period of five years after the termination of coverage; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.6(b), all records, books and documents required to be maintained by the provisions of N.J.A.C. 11:17C shall, upon his or her request, be produced for examination by the Commissioner or his or her duly authorized representatives; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a, the Commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license, and may levy a civil penalty, for a violation of the Producer Act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45c, any person violating the Producer Act is subject to a penalty not exceeding \$5,000.00 for the first offense and not exceeding \$10,000.00 for

each subsequent offense; moreover, the Commissioner may order restitution of moneys owed any person and reimbursement of costs of investigation and prosecution, as appropriate; and

COUNT 1

IT APPEARING, that American Surety Co. ("ASC") is organized in the State of Indiana and is a licensed insurer for bail surety; and

IT FURTHER APPEARING, that OBB signed a Bail Bond Agreement with ASC on January 14, 2011 (the "ASC Agreement"), wherein OBB was appointed as the representative of ASC for the purpose of executing bail bonds and binding ASC on said bail bonds; and

IT FURTHER APPEARING, that ASC supplied OBB with powers of attorney pursuant to the ASC Agreement so that OBB could execute bail bonds in the name of ASC; and

IT FURTHER APPEARING, that OBB was responsible for receiving and remitting to ASC the premiums for bail bonds issued under the powers of attorney, and for delivering any unused power of attorney to ASC at the request of ASC; and

IT FURTHER APPEARING, that ASC terminated the ASC Agreement with OBB on December 1, 2011 for the failure of OBB to remit premiums due on executed bail bonds and to return unused powers of attorney; and

IT FURTHER APPEARING, that in a letter dated December 1, 2011, ASC advised Respondents that \$11,800 was due for unused powers of attorney that Respondents failed to return, and that the total amount due to ASC under the ASC Agreement was \$82,577.78; and

IT FURTHER APPEARING, that on September 8, 2011, Respondents issued check number 1034 from an OBB account drawn on Unity Bank in the amount of \$22,345.73, payable to ASC, to pay premiums; and

IT FURTHER APPEARING, that Respondents then placed a stop payment on check number 1034; and

IT FURTHER APPEARING, that Respondents failed to replace check number 1034; and

IT FURTHER APPEARING, that Respondents' failure to remit to ASC funds due to ASC under the ASC Agreement constituted violations of N.J.S.A. 17:22A-40a(2), (4), (8) and (16), N.J.A.C. 11:17C-2.1(a) and 2.2(a), and N.J.A.C. 11:17A-4.10; and

COUNT 2

IT FURTHER APPEARING, that Respondents wrote check number 1034, in the amount of \$22,345.73, to ASC from an account drawn on Unity Bank that was not designated as a "Trust Account" on the bank records; and

IT FURTHER APPEARING, that the words "Trust Account" were not displayed on the face of check number 1034; and

IT FURTHER APPEARING, that Respondents' failure to establish and maintain a trust account for bail bond premiums when Respondents held premiums for more than five business days before remitting the premiums to an insurer constituted violations of N.J.S.A. 17:22A-40a(2) and (8) and N.J.A.C. 11:17C-2.3(a)1; and

COUNT 3

IT FURTHER APPEARING, that Respondents failed to return to ASC Power of Attorney No. AS1-0293784, issued on January 28, 2011, and that expired on October 28, 2011; and

IT FURTHER APPEARING, that Respondents failed to return to ASC Power of Attorney No. AS5-0788311, issued on June 13, 2011, and that expired on March 13, 2012; and

IT FURTHER APPEARING, that Respondents' failure to return two unused powers of attorney constituted violations of N.J.S.A. 17:22A-40a(2) and (8); and

COUNT 4

IT FURTHER APPEARING, that on or about October 1, 2012, the Department requested that Respondents provide bank records demonstrating that Respondents had sufficient funds when Respondents issued check number 1034 to ASC from an OBB account drawn on Unity Bank in the amount of \$22,345.73; and

IT FURTHER APPEARING, that on or about October 22, 2012, the Department sent a letter to Respondents again requesting that Respondents provide bank records demonstrating that Respondents had sufficient funds when Respondents issued check number 1034 to ASC from an OBB account drawn on Unity Bank in the amount of \$22,345.73; and

IT FURTHER APPEARING, that Respondents failed to respond to the Department's requests; and

IT FURTHER APPEARING, that Respondents have repeatedly failed to respond to the Department's inquiries, including not producing requested bail bond and bank account records for OBB; and

IT FURTHER APPEARING, that Respondents' failures to maintain accurate books and records reflecting all insurance related transactions, and failure to provide those records for examination by the Commissioner, constituted violations of N.J.S.A. 17:22A-40a(2) and (8), N.J.A.C. 11:17A-4.8, N.J.A.C. 11:17C-2.5(a), (b), (c) and (d), and N.J.A.C. 11:17C-2.6(a) and (b); and

COUNT 5

IT FURTHER APPEARING, that Bankers Insurance Company ("BIC") is organized in the State of Florida and is a licensed insurer for bail surety; and

IT FURTHER APPEARING, that OBB signed a Supervising Producer Agreement with BIC, with an effective date of June 21, 2011 (the "Supervising Producer Agreement"), wherein OBB was responsible to receive from sub-agents and transmit to BIC the premiums for bail bonds issued through BIC; and

IT FURTHER APPEARING, that Article V of the Supervising Producer Agreement required bond premiums to be forwarded to BIC within forty-five (45) days; and

IT FURTHER APPEARING, that on February 2, 2012, OBB issued check number 1119 in the amount of \$19,960.00 to BIC for the payment of premiums due BIC for twenty-six (26) bail bonds issued by OBB and sub-agents; and

IT FURTHER APPEARING, that check number 1119 was returned on February 9, 2012 for Non-Sufficient Funds; and

IT FURTHER APPEARING, that BIC subsequently conducted an audit of bail bond premiums owed by OBB and identified fifty-four (54) bail bonds for which OBB had not forwarded the premiums, for a total of \$36,135.00; and

IT FURTHER APPEARING, that the total amount of premiums owed to BIC by OBB after all payments and credits is \$21,631.00; and

IT FURTHER APPEARING, that Respondents' failure to abide by all the terms of a contract between OBB and BIC, Respondents' failure to remit to BIC bail bond premiums, and the issuance by Respondents of a check returned for Non-Sufficient Funds, constituted violations of N.J.S.A. 17:22A-40a(2), (4), (8) and (16), N.J.A.C. 11:17A-4.10, and N.J.A.C. 11:17C-2.1(a); and

COUNT 6

IT FURTHER APPEARING, that Financial Casualty & Surety, Inc. ("FCS") is organized in the State of Texas and is a licensed insurer for bail surety; and

IT FURTHER APPEARING, that OBB signed a Supervising Agent/Sub-Producer Bail Bond Agreement with FCS on February 28, 2012 (the "FCS Agreement"), wherein OBB was appointed as the representative of FCS for the purpose of executing bail bonds and binding FCS on said bail bonds; and

IT FURTHER APPEARING, that FCS supplied OBB with powers of attorney pursuant to the FCS Agreement so that OBB could execute bail bonds in the name of FCS; and

IT FURTHER APPEARING, that OBB was responsible to receive and remit to FCS the premiums for bail bonds issued under the powers of attorney, and to deliver any unused power of attorney to FCS at the request of FCS; and

IT FURTHER APPEARING, that Article 8 of the FCS Agreement required bail bond premiums of 1.5% for each \$1,000.00 of liability to be forwarded to FCS within seven (7) days; and

IT FURTHER APPEARING, that Article 19 of the FCS Agreement required OBB to submit a 1% contribution for each bail bond issued to the Build Up Fund ("BUF"), a reserve account maintained by FCS; and

IT FURTHER APPEARING, that OBB issued thirty-four (34) FCS powers of attorney for bail bonds between April 8, 2012 and August 15, 2012; and

IT FURTHER APPEARING, that OBB failed to pay FCS the required premium and that OBB failed to make the BUF contribution for the thirty-four (34) bail bonds; and

IT FURTHER APPEARING, that OBB failed to remit to FCS \$29,937.50 in premiums and to make \$19,952.50 in contributions to the BUF; and

IT FURTHER APPEARING, that Respondents' failures to remit to FCS insurance premiums in the amount of \$29,937.50 and to make contributions to the BUF in the amount of \$19,952.50, constituted violations of N.J.S.A. 17:22A-40a(2), (4), and (8), N.J.A.C. 11:17C-2.1(a), and N.J.A.C. 11:17A-4.10.

NOW, THEREFORE, IT IS on this 19th day of MARCH, 2018:

ORDERED, that Respondents appear and show cause why their insurance producer licenses should not be suspended or revoked pursuant to N.J.S.A. 17:22A-40a; and

IT IS FURTHER ORDERED, that Respondents shall appear and show cause why the Commissioner should not assess a civil penalty of up to \$5,000.00 for the first violation and \$10,000.00 for each subsequent violation of the Producer Act and order Respondents to pay restitution of moneys owed to any person, pursuant to the provisions of N.J.S.A. 17:22A-45c; and

IT IS FURTHER ORDERED, that Respondents appear and show cause why they should not be required to reimburse the Department for the cost of investigation and prosecution as authorized by 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 subpoenas 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. A copy of the request for a hearing shall also be sent to Deputy Attorney General Jeffrey S. Posta at fax number (609) 777-3607. The request for a hearing shall contain:

- (a) Respondent's full 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 the 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. Hart
Director of Insurance