

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

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Proceedings by the Commissioner of Banking )  
and Insurance, State of New Jersey, to fine, )  
suspend, and/or revoke the insurance producer )  
license of Avelino C. Andrade, Reference No. )  
8019882, )  
\_\_\_\_\_)

**ORDER TO SHOW CAUSE**

TO: Avelino C. Andrade  
14 Dynasty Drive  
Monroe, NJ 08831

This matter, having been opened by the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon information that Avelino C. Andrade (“Respondent”) may have violated various provisions of the insurance laws of the State of New Jersey; and

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

WHEREAS, Respondent is 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-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-4.10, 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-2.1(b), all premium funds shall be segregated and not in any manner commingled with any other funds of the insurance producer, except as may be permitted by N.J.A.C. 11:17C-1.1 to -2.6; 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 agreement 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), 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 the following circumstances: (1) 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; or (2) 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

WHEREAS, pursuant to N.J.A.C. 11:17C-2.5(a), each 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-2.6(b), all records, books and documents required to be maintained by the provisions of N.J.A.C. 11:17C-1.1 to -2.6 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-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 the investigation and prosecution; and

WHEREAS, on or about August 9, 1996, the Commissioner and Respondent entered into Consent Order No. E96-259 wherein the Respondent was fined \$7,500 for violations of the Producer Act; and

### **COUNT ONE**

IT APPEARING, that Respondent sold automobile insurance policies to consumers through the New Jersey Personal Automobile Insurance Plan (“NJPAIP”), the assigned risk mechanism for drivers unable to obtain coverage in the New Jersey auto insurance voluntary market; and

IT FURTHER APPEARING, that on or about May 6, 2015, Respondent solicited and sold an NJPAIP policy to client “CLD”; and

IT FURTHER APPEARING, that on or about May 6, 2015, Respondent received from CLD the full first year premium payment of \$360 to be used to bind coverage; and

IT FURTHER APPEARING, that on or about May 6, 2015, Respondent transmitted to NJPAIP a completed insurance application for CLD along with the minimum premium deposit of \$180 plus a \$5 installment fee; and

IT FURTHER APPEARING, that on or about May 29, 2015, National Continental Insurance Company (“Continental”) issued to CLD an automobile insurance policy effective from May 29, 2015 through May 29, 2016; and

IT FURTHER APPEARING, that on or about September 25, 2015, Continental sent a notice to Respondent and CLD that the residual premium balance of \$180 for CLD’s policy was due by October 26, 2015; and

IT FURTHER APPEARING, that neither Respondent nor CLD remitted to NJPAIP the residual balance of \$180; and

IT FURTHER APPEARING, that on or about October 30, 2015, Continental sent a notice to Respondent and CLD that Continental would terminate CLD’s policy effective November 28, 2015 for nonpayment of premium; and

IT FURTHER APPEARING, that on or about November 28, 2015, Continental terminated CLD’s insurance policy for nonpayment of the residual premium balance; and

IT FURTHER APPEARING, that Respondent misappropriated and failed to remit premium to an insurer, and allowed CLD’s policy to be terminated for failure to make payment, in violation of N.J.S.A. 17:22A-40a(2), (4), (8), and (16), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a), and N.J.A.C. 11:17C-2.2(a); and

**COUNT TWO**

IT FURTHER APPEARING, that Respondent paid the following premium payments to NJPAIP which were dishonored by Respondent’s bank for Non-Sufficient Funds (“NSF”):

<b>Check No.</b>	<b>Check Amount</b>	<b>Applicant's Initials</b>	<b>Policy No. (last 6 digits)</b>	<b>Check Returned as NSF</b>
1817	\$ 185.00	JR	3621-16	1/20/2016
1820	\$ 185.00	CJ	4516-16	1/21/2016
1821	\$ 185.00	ZO	4509-16	1/21/2016
1822	\$ 185.00	ABL	4512-16	1/21/2016
1823	\$ 185.00	AF	5694-16	1/21/2016
1829	\$ 185.00	EMB	6079-15	1/26/2016

IT FURTHER APPEARING, that Respondent issued six checks for the payment of premiums that were dishonored by Respondent's bank for NSF, in violation of N.J.S.A. 17:22A-40a(2), (4), (8), and (16), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a), and N.J.A.C. 11:17C-2.2(a); and

**COUNT THREE**

IT FURTHER APPEARING, that the six dishonored checks were issued from Respondent's business account, which was used for the payment of business expenses; and

IT FURTHER APPEARING, that at the time Respondent issued the six checks, Respondent did not maintain a trust account; and

IT FURTHER APPEARING, that Respondent issued six checks for the payment of premiums from a non-trust account, commingled premium funds with other funds, and failed to maintain a trust account, in violation of N.J.S.A. 17:22A-40a(2), and (8), N.J.A.C. 11:17C-2.1(b), and N.J.A.C. 11:17C-2.3(a); and

**COUNT FOUR**

IT FURTHER APPEARING, that the Commissioner requested that Respondent produce copies of the receipts that Respondent issued to clients ZO, EMB, ABL, CJ, AF, and JR for their premium payments; and

IT FURTHER APPEARING, that Respondent did not maintain copies of the requested receipts; and

IT FURTHER APPEARING, that Respondent failed to maintain copies of receipts, in violation of N.J.S.A. 17:22A-40a(2), N.J.A.C. 11:17C-2.5(a), and N.J.A.C. 11:17C-2.6(b); and

NOW, THEREFORE, IT IS on this 20<sup>th</sup> day of APRIL, 2018

ORDERED, that Respondent appear and show cause why his New Jersey insurance producer license should not be suspended or revoked pursuant to N.J.S.A. 17:22A-40a; and

IT IS FURTHER ORDERED, that Respondent 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 Respondent 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 Respondent appear and show cause why he should not be required to reimburse the Department for the cost of the investigation and prosecution, including attorneys' fees, as authorized pursuant to N.J.S.A. 17:22A-45c; and

IT IS PROVIDED, that Respondent has the right to request an administrative hearing, to be represented by counsel or other qualified representative, at his 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 Respondent, 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, New Jersey 08625, or by faxing the hearing request to the Department at (609) 292-5337. A copy of the request for a hearing shall also be sent to Deputy Attorney General Ryan S. Schaffer at Division of Law, Banking and Insurance Section, 25 Market Street, P.O. Box 117, Trenton, NJ 08625-0117, or by faxing the hearing request to (609) 777-3607. The request shall contain the following:

- (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 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 the hearing.

  
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Peter L. Hartt  
Director of Insurance