

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 license)
of Gary Schenk, Reference No.)
9473156.)

**ORDER
TO
SHOW CAUSE**

To: Gary Schenk
1447 Thornwood Drive
Mount Laurel, NJ 08054

THIS MATTER, having been opened by the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon information that Gary Schenk (“Schenk” or “Respondent”) may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Schenk was formerly licensed as a resident insurance producer in the State of New Jersey, pursuant to N.J.S.A. 17:22A-32(a), until August 31, 2016, when his license expired; and

WHEREAS, Schenk 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-40(d), 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-40(a)(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-40(a)(5), an insurance producer shall not intentionally misrepresent the terms of an actual or proposed insurance contract, policy or application for insurance; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(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-40(a)(10), an insurance producer shall not forge another's name to an application for insurance or to any document related to an insurance transaction; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(16), an insurance producer shall not commit any fraudulent act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(19), an insurance producer shall not fail to notify the Commissioner within 30 days of the final disposition of any formal disciplinary proceedings initiated against the insurance producer, or disciplinary action taken against the

producer, by the Financial Industry Regulatory Authority ("FINRA"), any successor organization, or other similar non-governmental regulatory authority with statutory authority to create and enforce industry standards of conduct, or of any other administrative actions or criminal prosecutions, as required by sections 15 and 22 of P.L.2001, c.210 (C.17:22A-40 and 17:22A-47), or fail to supply any documentation the Commissioner may request in connection therewith; and

WHEREAS, pursuant to N.J.S.A. 17:22A-47(c), an insurance producer shall report to the Commissioner any disciplinary action taken against the insurance producer, or any formal disciplinary proceedings initiated against the producer, by FINRA, any successor organization, or other similar non-governmental regulatory authority with statutory authority to create and enforce industry standards of conduct, within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents; and

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

WHEREAS, pursuant to N.J.S.A. 17:22A-45(c), 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

COUNT 1

IT APPEARING, that on November 28, 2015, Schenk submitted a Request for Policy Loan to John Hancock Life Insurance Company ("John Hancock") for an insurance policy owned by P.S.; and

IT FURTHER APPEARING, that Schenk completed the information on the Request for Policy Loan; and

IT FURTHER APPEARING, that Schenk forged the signature of P.S. on the Request for Policy Loan and on a Form W-9 submitted therewith; and

IT FURTHER APPEARING, that P.S. did not apply for a loan from John Hancock or authorize Schenk to apply for a loan from John Hancock; and

IT FURTHER APPEARING, that Schenk admitted that he signed the name of P.S. on the Request for Policy Loan in a letter to JH Livingston at Acorn Financial Services dated January 7, 2016; and

IT FURTHER APPEARING, that Schenk submitted a false Request for Policy Loan to John Hancock, and forged the signature of P.S. on the Request for Policy Loan and on the Form W-9, in violation of N.J.S.A. 17:22A-40(a)(2), (5), (8), (10) and (16); and

COUNT 2

IT FURTHER APPEARING, that effective on May 19, 2016, Schenk entered into a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA; and

IT FURTHER APPEARING, that FINRA alleged in the AWC that Schenk violated FINRA Rule 2010 by forging P.S.'s signature on a form seeking a loan against her variable universal life insurance policy; and

IT FURTHER APPEARING, that Schenk consented in the AWC to an 18-month suspension and a fine of \$5,000; and

IT FURTHER APPEARING, that Schenk did not report the AWC or the administrative action taken by FINRA to the Commissioner within 30 days of the final disposition of the matter, in violation of N.J.S.A. 17:22A-40(a)(19) and N.J.S.A. 17:22A-47(c); and

NOW, THEREFORE, IT IS on this 29th day of July, 2019

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-40(a); 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 up to \$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 N.J.S.A. 17:22A-45(c); and

IT IS FURTHER ORDERED, that Respondent appear and show cause why, in addition to any other penalty, he should not be required to reimburse the Department of Banking and Insurance (“Department”) for the cost of the investigation and prosecution as authorized pursuant to N.J.S.A. 17:22A-45(c); 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 Jeffrey S. Posta, Banking and Insurance Section, 25 Market Street, P.O. Box 117, Trenton, New Jersey 08625-0117. 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.



Marlene Caride
Commissioner