

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

)	ORDER
)	TO SHOW CAUSE
Proceedings by the Commissioner of)	
Banking and Insurance, State of New Jersey,)	
to fine, suspend and/or revoke the insurance)	
producer license of Michael Anthony)	
Fortunato, Reference No. 1575911.)	

TO: Michael Anthony Fortunato
9 Colonial Way
Succasunna, New Jersey 07876

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

WHEREAS, on or about March 10, 2015, Respondent was licensed as a resident insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-32(a), and maintained said license until it expired on or about August 31, 2019; 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”), the Producer Licensing regulations promulgated thereunder, N.J.A.C. 11:17-1.1 to -2.17, 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)(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-40(a)(7), an insurance producer shall not commit any insurance unfair trade practice or fraud; 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)(16), an insurance producer shall not commit any fraudulent act; 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 this regulation; and

WHEREAS, pursuant to N.J.A.C 11:17A-4.8, an insurance producer shall reply, in writing, to any inquiry of the Department of Banking and Insurance 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.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 or may levy a civil penalty 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 of up to \$5,000.00 for the first offense and up to \$10,000.00 for each subsequent offense; additionally, the Commissioner may order restitution of moneys owed any person and reimbursement of costs of the investigation and prosecution; and

ALLEGATIONS COMMON TO ALL COUNTS

IT APPEARING, that at all relevant times, Fortunato was a licensed insurance producer in the State of New Jersey, and employed as a sales associate with the Richard Mollar Agency ("RMA"), a New Jersey licensed insurance agency affiliated with the Allstate Insurance Company ("Allstate"); and

IT FURTHER APPEARING, that on or about February 20, 2018, Fortunato accepted cash from "F.C.," a RMA client, in the amount of \$691.00 as payment for the annual premium on an Allstate automobile insurance policy, and

IT FURTHER APPEARING, that without the knowledge or approval of F.C., Fortunato did not remit the \$691.00 cash premium payment to Allstate nor to RMA, but retained possession of said funds and then converted same for his own personal use and benefit; and

IT FURTHER APPEARING, that on or about February 27, 2018, Fortunato made a payment to Allstate in the amount of the \$123.00 which was applied towards the outstanding premium due on the automobile insurance policy owned by F.C.; and

IT FURTHER APPEARING, that upon being informed that Allstate had not received full payment of the insurance premium due for F.C.'s policy, RMA investigated and determined that Fortunato had misappropriated the cash remitted to him by F.C.; and

IT FURTHER APPEARING, that on or about March 5, 2018, RMA terminated Fortunato "for cause" from his salesperson position for thief of funds; and

COUNT ONE

IT FURTHER APPEARING, that Respondent demonstrated incompetence, untrustworthiness and financial irresponsibility in the conduct of insurance business in that he received cash from a client to pay an insurance premium and failed to remit same to Allstate or RMA within five (5) days of his receipt thereof, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (7), (8) and (16) and N.J.A.C 11:17C-2.2(a); and

COUNT TWO

IT FURTHER APPEARING, that Respondent failed to operate in a fiduciary capacity and engaged in fraudulent and deceitful conduct in the conduct of insurance business in that he misappropriated and improperly converted to his own use a cash payment received from a policyholder, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (7), (8) and (16) and N.J.A.C 11:17C-2.1(a); and

COUNT THREE

IT FURTHER APPEARING, that in the course of its investigation, the Department of Banking and Insurance ("DOBI") issued correspondence dated December 4, 2018 and June 24,

2019 requesting that Respondent appear at its offices and provide information regarding the insurance transaction involving F.C. and RMA; and

IT FURTHER APPEARING, that Respondent failed to appear and did not provide the requested information to DOBI, in violation of N.J.A.C. 11:17A-4.8; and

NOW, THEREFORE, IT IS on this 21 day of March, 2022

ORDERED, that Respondent appear and show cause why his New Jersey insurance producer licenses 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 for the costs of the investigation and prosecution as authorized by 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 their 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 Dakar R. Ross, Deputy Attorney General, Department of Banking and Insurance, P.O. Box 117, Trenton, New Jersey 08625. The request from each respondent 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 a hearing.



Marlene Caride
Commissioner