

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

)	FINAL ORDER
Proceedings by the Commissioner of)	
Banking and Insurance, State of New Jersey,)	
to fine, suspend and/or revoke the insurance)	
producer licenses of Earnest Kitchens,)	
Reference No. 1573151 and Kitchens)	
Affordable Bail Bonds, LLC, Reference No.)	
1573889.)	

TO: Earnest Kitchens
1911 Raspberry Ct.
Edison, NJ 08817

Kitchens Affordable Bail Bonds, LLC
c/o Earnest Kitchens
1911 Raspberry Ct.
Edison, NJ 08817

This matter, having been opened by the Commissioner of Banking and Insurance, State of New Jersey (“Commissioner”), upon information that Earnest Kitchens (“Kitchens”) and Kitchens Affordable Bail Bonds, LLC (“Affordable Bail”) (collectively, “Respondents”) may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Kitchens was licensed as a resident insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-32(a), until his license expired on July 31, 2017; and

WHEREAS, Affordable Bail was licensed as a resident business entity insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-32(b), until its license expired on May 31, 2017; 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”), the Producer Licensing regulations, N.J.A.C. 11:17-1.1 to -2.17, and the Insurance Producer Standards of Conduct regulations, 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-33(f), an insurance producer shall inform the Commissioner by any means acceptable to the commissioner of a change of address within 30 days of the change; 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)(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 11:17-2.8(f)(2), an insurance producer shall provide in the format prescribed by the Department notification of any change of business mailing or location address, residence address, phone numbers and email addresses within 30 days of the change and maintain a proof of notification for five years or until receipt of a license or other documentation from the Department showing the new address; 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.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

WHEREAS, the Commissioner issued Order to Show Cause E21-26 on June 14, 2021, alleging violations of New Jersey insurance laws by Respondents as set forth below:

ALLEGATIONS COMMON TO ALL COUNTS

IT APPEARING, that at all relevant times, Kitchens was the sole owner, officer and Designated Responsible Licensed Producer of insurance producer Affordable Bail; and

IT FURTHER APPEARING, that on or about August 22, 2016, Respondents accepted a \$1,000 payment from "R.B." as a bail

bond premium for a surety bond to be issued on behalf of R.B.'s relative; and

IT FURTHER APPEARING, that on or about August 24, 2016, prior to the surety bond being issued by Respondents, R.B.'s relative was released from custody on his own recognizance under an unsecured bond; and

IT FURTHER APPEARING, that on or about August 24, 2016, Respondents were advised that a surety bond was no longer needed or required for the release of R.B.'s relative, and thereafter advised R.B. that the \$1,000 bail bond premium would be fully refunded; and

IT FURTHER APPEARING, that despite multiple demands from R.B. to return said monies, Respondents failed and refused to return the \$1,000 bail bond premium to R.B.; and

IT FURTHER APPEARING, that on or about October 16, 2016, R.B. filed a complaint with the N.J. Department of Banking and Insurance ("DOBI") regarding Respondents' refusal to issue a refund, and thereupon DOBI opened an investigation into this matter; and

COUNT ONE

IT FURTHER APPEARING, that Respondents received and accepted from R.B. a \$1,000 payment as a bail bond premium to issue a surety bond, but did not issue said bond nor render any services to secure the release of R.B.'s relative and instead improperly withheld and/or converted the monies received from R.B. for their own use and/or benefit, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (8) and (16) and N.J.A.C. 11:17C-2.1(a); and

COUNT TWO

IT FURTHER APPEARING, that the last known business address of Affordable Bail provided by Respondents to DOBI and recorded in DOBI's licensing records was 55 Paterson Street, New Brunswick, New Jersey 08901; and

IT FURTHER APPEARING, that the last known residential address of Kitchens provided by Respondents to DOBI and recorded in DOBI's licensing records was 536 Elise Avenue, South Plainfield, New Jersey 07080; and

IT FURTHER APPEARING, that through its investigation, DOBI determined that Respondents had abandoned and no longer occupied the above referenced addresses, without having notified the Department within 30 days of the change of mailing address and advise of the new addresses for their business and residence, in violation of N.J.S.A. 17:22A-33(f) and N.J.A.C 11:17-2.8(f)(2); and

IT FURTHER APPEARING, that as set forth in the Certification of Dakar Ross, attached hereto as Exhibit A, Respondents were given notice of the aforesaid charges and an opportunity to contest the charges at a hearing pursuant to Order to Show Cause E21-26, which was duly served on Respondents by certified mail, Return Receipt Requested, and regular mail to the addresses listed on this Final Order in accordance with N.J.A.C. 11:17D-2.1(a)(3); and

IT FURTHER APPEARING, that Respondents failed to provide written responses to the charges contained in Order to Show Cause E21-26 within 20 days as provided by N.J.A.C. 11:17D-2.1(d)(1), or at any time thereafter, and therefore Respondents waived their right to a hearing to contest these charges and the charges are deemed admitted, pursuant to N.J.A.C. 11:17D-2.1(b)(1); and

IT FURTHER APPEARING, that in Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987), the Supreme Court established seven factors to be considered in determining the imposition of civil fines in administrative proceedings (“Kimmelman Factors”); and

IT FURTHER APPEARING, that the seven Kimmelman Factors are as follows: (1) the good or bad faith of the defendant; (2) defendant’s ability to pay a civil fine; (3) the amount of profits obtained from the illegal activity; (4) the injury to the public; (5) the duration of the misconduct; (6) the existence of criminal or treble damages actions; and (7) the past violations of defendant; and

IT FURTHER APPEARING, that the Kimmelman Factors apply to this matter as follows: (1) Respondent showed bad faith by knowingly misappropriating money from his client; (2)

Respondent has not provided any evidence of his inability to pay a civil fine; (3) Respondent profited in the amount of \$1,000 as a result of the illegal activity; (4) there was injury to the public because Respondent embezzled money entrusted to him by his client and also his actions caused harm to the reputation of the insurance industry and to licensed producers everywhere; (5) Respondent's illegal activity was a singular event; (6) no criminal or treble damages actions have been filed against Respondent regarding his illegal activity; and (7) Respondent has no past violations; and

NOW, THEREFORE, IT IS on this 6 day of September, 2022,

ORDERED, that the allegations contained in Counts One and Two of Order to Show Cause E21-26 are deemed admitted by Respondents, pursuant to N.J.A.C. 11:17D-2.1(b)(1); and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-40 and N.J.A.C. 11:17D-2.1(b)(2), the resident insurance producer licenses of Earnest Kitchens and Kitchens Affordable Bail Bonds, LLC are hereby **REVOKED** effective upon the execution of this Final Order by the Commissioner; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c), Respondents, jointly and severally, shall pay a civil penalty in the total amount of \$15,000 to the Commissioner, determined as follows: \$5,000 for the violation stated in Count 1 of the OTSC and \$10,000 for the violation stated in Count 2 of the OTSC; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c), Respondents, jointly and severally, shall be responsible for the reimbursement to the Department of the costs of investigation totaling \$1,300.00. A true and exact copy of the Certification of Matthew C. Gervasio, Department of Banking and Insurance Investigator, is attached hereto as Exhibit B; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c), Respondents, jointly and severally, shall be responsible to pay restitution to Racquel Barnes in the amount of \$1,000.00; and

IT IS FURTHER ORDERED, that the caption of Order to Show Cause E21-26 issued in this matter is hereby amended from “Kitchens Affordable Bails Bond, LLC” to “Kitchens Affordable Bail Bonds, LLC” to correct a typographical error therein; and

IT IS FURTHER ORDERED, that Respondents shall pay the above penalties and costs to the Commissioner of Banking and Insurance, State of New Jersey, P.O. Box 329, Trenton, New Jersey 08625, Attention: Virgil Downtin, Chief of Investigations, by certified check, cashier’s check or money order made payable to the “State of New Jersey, General Treasury,” within ten days from the date of service of this Order; and

IT IS FURTHER ORDERED, that in the event full payment of the penalty and costs is not made, the Commissioner may exercise any and all remedies available by law, including but not limited to recovery of any unpaid penalties, with post-judgment interest, in accordance with the Penalty Enforcement Law, N.J.S.A. 2A:58-10 to -12; and

IT IS FURTHER ORDERED, that the civil penalty in this Final Order is imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of the public health, safety and welfare, and is not intended to constitute debts which may be limited or discharged in a bankruptcy proceeding; and

IT IS FURTHER ORDERED, that the provisions of this Final Order represent a final agency decision and constitute a final resolution of the allegations contained in Order to Show Cause No. E21-26.

A handwritten signature in blue ink, appearing to read "M. Caride".

Marlene Caride, Commissioner