

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 Louis J. Macaluso,)
Reference No. 9716487 and Affinity)
Title Agency Inc. a/k/a Affinity)
Title Agency, Ref. No. 9720106)

CONSENT
ORDER

TO: Louis J. Macaluso
SBI # 000505938C
Southern State Correction Facility
4295 Route 47
Delmont, New Jersey 08314

-and-

Affinity Title Agency, Inc.
c/o Louis J. Macaluso
SBI # 000505938C
Southern State Correction Facility
4295 Route 47
Delmont, New Jersey 08314

THIS MATTER, having been opened to the Commissioner of Banking and Insurance ("Commissioner"), State of New Jersey, upon information that Louis J. Macaluso ("Macaluso") and Affinity Title Agency, Inc. a/k/a Affinity Title Agency ("Affinity"), (collectively "Respondents"), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Macaluso was previously licensed as a resident insurance producer pursuant to N.J.S.A. 17:22A-32 before his license expired on April 30, 2013; and

WHEREAS, Affinity was previously licensed as a resident insurance producer pursuant to N.J.S.A. 17:22A-32 before its license expired on May 31, 2011; and

WHEREAS, pursuant to N.J.S.A. 17:22A-32b(2), Macaluso was the Designated Responsible Licensed Producer ("DRLP"), owner of Affinity and responsible for the conduct of Affinity; and

WHEREAS, Macaluso and Affinity are subject to the provisions of the New Jersey Insurance Producer Licensing Act ("Producer Act"), N.J.S.A. 17:22A-26, et seq., the Title Insurance Act of 1974 ("Title Act"), N.J.S.A. 17:46B-1 et seq., the regulations governing Producer Licensing, N.J.A.C. 11:17-1 et seq. and the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 et seq. and N.J.A.C. 11:17C-1.1 et seq.; and

WHEREAS, pursuant to N.J.S.A. 17:22A-33f, an insurance producer shall inform the Commissioner, by any means acceptable to the Commissioner, of a change of address within thirty (30) days of the change; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(2), an insurance producer shall not violate any insurance laws, regulations, subpoenas or orders 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 business practices, or demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business; 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.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 against any person who is under investigation for or charged with a violation of the Producer Act 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-42a, an agent shall abide by the terms of its agency agreement with an insurer; and

WHEREAS, pursuant to N.J.S.A. 17:46B-10.1a, every title insurance producer licensed pursuant to the Producer Act shall maintain a separate record of all receipts and disbursements as

a depository for funds representing closing and settlement proceeds of a real estate transaction, which funds shall be deposited in a separate trust or escrow account, and which shall not be commingled with a producer's or company's own funds or with funds held by a producer or company in any other capacity; and

WHEREAS, pursuant to N.J.A.C. 11:17-2.14(c), submitting a license for cancellation or allowing a license to expire shall not void or terminate any disciplinary proceedings against the licensee, nor prevent imposition of any penalty, ordered restitution or costs; 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), an insurance producer shall hold all premium funds in a fiduciary capacity and shall not misappropriate, improperly convert to the insurance producer's own use or illegally withhold premium funds; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.2(c), all title insurance settlement funds shall be disbursed within five business days after settlement except as determined by the parties; and

WHEREAS, pursuant to N.J.A.C. 11:17-2.7(f)2, a licensee shall advise the Department of Banking and Insurance (the "Department") of any change of residence address within thirty (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. 11:17A-4.6, insurance policies received by the insurance producer from an insurer shall be delivered or mailed to the insured with 10 calendar days of their receipt or, if prepared by the insurance producer, shall be delivered to the insured within 30 days of receiving proof that all requirements or exceptions have been satisfactorily disposed of; and

IT APPEARING that the Commissioner issued Order to Show Cause No. E14-129 on November 7, 2014, alleging violations of the New Jersey insurance laws by Respondents, as follows:

COUNTS 1 to 15

(Macaluso and Affinity)

IT APPEARING that, between March 11, 2011 and May 5, 2011, Respondents Macaluso and Affinity, acting as settlement agents, failed to make required payoffs at fifteen real estate settlements for properties located in Bergen, Essex, Hudson, Hunterdon, Mercer, Morris, Ocean and Sussex Counties in New Jersey; and

IT FURTHER APPEARING that Respondents Macaluso and Affinity failed to disburse to

lenders approximately \$2.6 million dollars received at the fifteen real estate closings; and

IT FURTHER APPEARING that on October 31, 2013, Respondent Macaluso plead guilty to a two count Accusation that charged him with Theft by Failure to Make Required Disposition of Property Received in the Second Degree and for Misconduct by a Corporate Official in the Second Degree before the Superior Court of New Jersey, Bergen County, Criminal Division; and

IT FURTHER APPEARING that January 10, 2014, Respondent Macaluso was convicted and sentenced to ten years in prison for the theft including \$2.6 million dollars entrusted to him as a settlement agent to pay off multiple mortgage loans in connection with the real estate closings he handled; and

IT FURTHER APPEARING that Respondents Macaluso and Affinity improperly withheld, misappropriated and converted escrow funds belonging to insureds, property owners and lenders received in the course of conducting insurance business, which constitutes fraudulent and dishonest practices and demonstrates incompetence, untrustworthiness and financial irresponsibility in the conduct of insurance business, 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.S.A. 17:46B-10.1a; and

COUNT 16

(Macaluso and Affinity)

IT FURTHER APPEARING that by misappropriating funds received in the course of insurance business and not disbursing funds in accordance with settlement instructions, Respondents Macaluso and Affinity failed to abide by the terms of its agency agreements with surety companies, in violation of N.J.S.A. 17:22A-42a; and

COUNT 17

(Macaluso and Affinity)

IT FURTHER APPEARING that Respondents Macaluso and Affinity failed to disburse settlement funds of approximately \$2.6 million dollars received at fifteen New Jersey real estate closings within five (5) days after settlement, in violation of N.J.A.C. 11:17C-2.2(c); and

COUNT 18

(Macaluso and Affinity)

IT FURTHER APPEARING that on April 26, 2011, Respondents Macaluso and Affinity were the settlement agents for the sale and purchase of property located at 1216 River Avenue, Point Pleasant, New Jersey; and

IT FURTHER APPEARING that Respondents Macaluso and Affinity collected a premium in the amount of \$1,606.00 in exchange for the issuance and delivery of an Owners Title Insurance Policy for the coverage amount of \$380,000.00; and

IT FURTHER APPEARING that Respondents Macaluso and Affinity failed to deliver the Owners Title Insurance Policy to the insured, in violation of N.J.A.C. 11:17A-4.6; and

COUNT 19

(Macaluso and Affinity)

IT FURTHER APPEARING that May 14, 2011, Respondents Macaluso and Affinity were the settlement agents for the sale and purchase of property located at 107 Makin Avenue, Point Pleasant, New Jersey; and

IT FURTHER APPEARING that Respondents Macaluso and Affinity collected a premium in

the amount of \$2,549.00 in exchange for the issuance and delivery of an Owners Title Insurance Policy for the coverage amount of \$550,00.00; and

IT FURTHER APPEARING that Respondents Macaluso and Affinity failed to deliver the Owners Title Insurance Policy to the insured, in violation of N.J.A.C. 11:17A-4.6; and

COUNT 20

(Macaluso)

IT FURTHER APPEARING that effective May 1, 2011, Macaluso represented to the Department that his residence address was 757 Norman Place, Westfield, New Jersey 07090; and

IT FURTHER APPEARING that on or about September 21, 2011, the property located at 757 Norman Place, Westfield, New Jersey 07090 was sold to another, who then resided at the address; and

IT FURTHER APPEARING that Macaluso failed to notify the Department within thirty days of his change in residence address, in violation of N.J.S.A. 17:22A-33f, N.J.S.A. 17:22A-40a(2), and N.J.A.C. 11:17-2.7(f)2.

IT FURTHER APPEARING that on October 1, 2013 Respondent Macaluso entered into a Settlement Agreement whereby he entered into Consent Judgments in favor of Commonwealth Land Title Insurance Company in the amount of \$1,608,752.32; Title Resource Guaranty Company in the amount of \$1,681,803.78 and New Jersey Title Insurance Company in the amount of \$2,623,769.64, respectively; and

IT FURTHER APPEARING that Respondent Macaluso has agreed to have judgments entered against him in the approximate amount of \$5.9 million dollars including approximately \$2.6 million dollars stemming from the New Jersey real estate transactions described in Order to Show Cause No. E14-129, Counts 1 through 15; and

IT FURTHER APPEARING that Respondents Macaluso and Affinity admit and agree to take responsibility for the violations contained in Counts 1 through 20 of the Order to Show Cause; and

IT FURTHER APPEARING that Respondents Macaluso and Affinity have waived their right to a hearing on the aforementioned violations and consent to the payment of a fine jointly and severally to the Commissioner in the amount of \$175,000.00 and to the revocation of their expired insurance producer licenses; and

IT FURTHER APPEARING that this matter should be resolved upon the consent of the parties without resort to a formal hearing.

NOW, THEREFORE, IT IS on this 5th day of May, 2015,

ORDERED AND AGREED that the charges contained in Counts 1 through 20 of Order to Show Cause No. E14-129 are admitted by Respondents Macaluso and Affinity; and

IT IS FURTHER ORDERED AND AGREED that, pursuant to N.J.S.A. 17:22A-40, the expired resident insurance producer licenses of Respondents Macaluso and Affinity are hereby REVOKED effective upon the execution of this Consent Order by the Commissioner or his designee; and

IT IS FURTHER ORDERED AND AGREED that, pursuant to N.J.S.A. 17:22A-45c, Respondents Macaluso and Affinity shall pay jointly and severally a fine of \$175,000.00 to the Commissioner for the violations admitted herein and described in Order to Show Cause No. E14-129; and

IT IS FURTHER ORDERED AND AGREED that said fine shall be paid by certified check, cashier's check, money order or other certified funds made payable to the "State of New Jersey - General Treasury," due and payable in full immediately upon execution of this Consent Order by Respondents; and

IT IS FURTHER ORDERED AND AGREED that the signed Consent Order together with the fine of \$175,000.00 shall be remitted to:

Carl M. Bornmann, Deputy Attorney General
State of New Jersey, Division of Law
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 117
Trenton, New Jersey 08625


IT IS FURTHER ORDERED that in the event full payment of the fines are not made, the Commissioner may exercise any and all

remedies available by law, including but not limited to recovery of any unpaid penalties, in accordance with The Penalty Enforcement Law, N.J.S.A. 2A:58-10 et seq.; and

IT IS FURTHER ORDERED AND AGREED that the fines in this Final Order are 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 are not intended to constitute debts which may be limited or discharged in a bankruptcy proceeding; and


IT IS FURTHER ORDERED AND AGREED that the provisions of this Consent Order represent a final agency decision and constitute final resolution of only the violations contained in Order to Show Cause No. E14-129 related to Respondents; and

IT IS FURTHER ORDERED AND AGREED that the Respondents shall cease and desist from engaging in the conduct that gave rise to this Consent Order.




PETER L. HARTT
Director of Insurance

Consented to as to Form,
Content and Entry:




Louis J. Macaluso
Individually

Date: 4/18/15



Affinity Title Agency, Inc.
By: *LOUIS J. MACALUSO*
Title: *PRESIDENT.*

Date: 4/18/15




Kevin Buchan, Esq.

Date: 4/27/15

Attorney for Respondents
Louis J. Macaluso and Affinity Title Agency, Inc.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY



By: Carl M. Bornmann
Deputy Attorney General
Attorney for the New Jersey
Dept. of Banking and Insurance

Date: 4/28/15