

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 and )  
revoke the insurance producer )  
license of Phyllis M. Daniel, )  
Reference No. 0301026. )

**CONSENT ORDER**

TO: Phyllis M. Daniel  
5744 Berkshire Valley Rd.  
Oak Ridge, NJ 07438

This matter, having been opened by Kenneth E. Kobylowski, Commissioner, Department of Banking and Insurance, State of New Jersey ("Commissioner"), upon information that Phyllis Daniel may have violated various provisions of the insurance laws of the State of New Jersey; and

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

WHEREAS, Daniel is subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 et seq.; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(2), an insurance producer shall not violate any insurance laws or regulations; 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; and

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

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

WHEREAS, on November 17, 2014, the Commissioner issued Order to Show Cause No. E14-134 ("OTSC"); and

WHEREAS, the OTSC alleged:

**ALLEGATIONS COMMON TO ALL COUNTS**

IT APPEARING that, at all times relevant hereto, A.C.'s home in Hudson County, New Jersey was insured by Balboa Insurance Group ("Balboa") and

IT FURTHER APPEARING that, at all times relevant hereto, Respondent Daniel and her husband jointly owned BED Construction Company ("BED"); and

IT FURTHER APPEARING that, on or about August 1, 2008, A.C.'s home was severely damaged by fire; and

IT FURTHER APPEARING that, on or about August 2, 2008, A.C. retained Le Fante & Sarasohn ("Sarasohn") to provide public adjusting services; and

IT FURTHER APPEARING that, following the fire, A.C. contacted her longtime insurance agent, Respondent Daniel; and

IT FURTHER APPEARING that Respondent Daniel and A.C. entered into an oral agreement, pursuant to which BED would repair A.C.'s home; and

**COUNT 1**

IT FURTHER APPEARING that, on September 26, 2008, American Claim Management ("American"), an agent of Balboa, sent Sarasohn a check, number ending in 889, in the amount of \$284,059.20 ("Check 889"), made payable to Sarasohn and A.C.; and

IT FURTHER APPEARING that Check 889 was a partial payment on A.C.'s insurance claim for damages to her Hudson County home stemming from the August 1, 2008 fire; and

IT FURTHER APPEARING that Sarasohn Executive Vice President Kevin Mulligan endorsed Check 889 on behalf of the company; and

IT FURTHER APPEARING that Sarasohn then provided Check 889 directly to Respondent Daniel; and

IT FURTHER APPEARING that Respondent Daniel forged A.C.'s signature on the back of Check 889; and

IT FURTHER APPEARING that, by forging A.C.'s name on the back of Check 889, Respondent Daniel used fraudulent, coercive or dishonest practices and forged another's name on a document related to an insurance

transaction, in violation of N.J.S.A. 17:22A-40a(2), (8), (10), and (16); and

**COUNT 2**

IT FURTHER APPEARING that, on or about October 7, 2008, Respondent Daniel deposited Check 889 into the account of her insurance company, Exodus Financial Services, Inc. ("Exodus"); and

IT FURTHER APPEARING that Respondent Daniel used the funds from Check 889 for her own benefit; and

IT FURTHER APPEARING that Respondent Daniel did not have A.C.'s permission to utilize the funds from Check 889 for Respondent Daniel's own benefit; and

IT FURTHER APPEARING that, by using the funds from Check 889 for her own benefit, rather than to repair A.C.'s home, Respondent Daniel improperly withheld, misappropriated, or converted money received in the course of doing insurance business and demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of insurance business in this State, in violation of N.J.S.A. 17:22A-40a(2), (4), (8), and (16); and

**COUNT 3**

IT FURTHER APPEARING that, on or about November 11, 2008, American sent Sarasohn another check, number ending in 786, in the amount of \$37,781.17 ("Check 786") made out to Sarasohn and A.C.; and

IT FURTHER APPEARING that Check 786 was also a partial payment on A.C.'s insurance claim for damages to her Hudson County home stemming from the August 1, 2008 fire; and

IT FURTHER APPEARING that Sarasohn endorsed Check 786; and

IT FURTHER APPEARING that A.C. endorsed Check 786 and gave it to Respondent Daniel; and

IT FURTHER APPEARING that, on or about November 25, 2008, Respondent Daniel deposited Check 786 into Exodus' account; and

IT FURTHER APPEARING that the \$37,781.17 was not used to repair A.C.'s Hudson County home; and

IT FURTHER APPEARING that none of the \$37,781.17 was returned to A.C.; and

IT FURTHER APPEARING that, by using the funds from Check 786 for her own personal benefit, Respondent Daniel improperly withheld, misappropriated, or converted money received in the course of doing insurance business and demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of insurance business in this State, in violation of N.J.S.A. 17:22A-40a(2), (4), (8), and (16); and

IT FURTHER APPEARING that, on January 20, 2015, Daniel answered the OTSC and requested a hearing; and

IT FURTHER APPEARING that the matter was transmitted to the Office of Administrative Law, OAL Dkt No. BKI 01539-2015N; and

IT FURTHER APPEARING that Daniel admits and agrees to take responsibility for the violations contained in Counts 1 through 3 of the OTSC; and

IT FURTHER APPEARING that, pursuant to N.J.S.A. 17:22A-40a and N.J.S.A. 17:22A-45c, cause does exist for the

imposition of an administrative penalty upon Daniel for these violations; and

IT FURTHER APPEARING that, pursuant to N.J.S.A. 17:22A-40, cause does exist to revoke Daniel's insurance producer license; and

IT FURTHER APPEARING that Daniel has waived the right to a hearing on the above violations and consents to the revocation of her insurance producer license and the payment of an administrative penalty to the Commissioner of \$22,500.00; and

IT FURTHER APPEARING that this matter should be resolved upon the consent of both parties without resorting to a formal hearing; and

NOW, THEREFORE, IT IS on this 30<sup>th</sup> day of July, 2015:

ORDERED AND AGREED that Daniel admits to the allegations in OTSC E14-134 listed above; and

IT IS FURTHER ORDERED AND AGREED that Daniel admits the above-referenced conduct constitutes three separate violations of the Producer Licensing Act; and

IT IS FURTHER ORDERED AND AGREED that Daniel's New Jersey insurance producer license is hereby REVOKED; and

IT IS FURTHER ORDERED AND AGREED that, pursuant to

N.J.S.A. 17:22a-45c, Daniel shall pay to the Commissioner \$22,500.00 in administrative penalties;

IT IS FURTHER ORDERED AND AGREED that Daniel shall make a down payment of these administrative penalties in the amount of \$1,000.00 to the Commissioner, due on July 1, 2015. Payment shall be made by certified check, bank check, or money order payable to the "State of New Jersey, General Treasury," and shall be sent to:

Gordon A. Queenan, Deputy Attorney General  
Banking and Insurance Section  
R.J. Hughes Justice Complex  
25 Market Street  
P.O. Box 117  
Trenton, NJ 08625-0117

IT IS FURTHER ORDERED AND AGREED that the remaining \$21,500.00 in administrative penalties shall be paid in monthly installments as follows: 14 monthly payments of \$500.00 per month, beginning on August 1, 2015; 21 monthly payments of \$660.00 a month, beginning on October 1, 2016; and a final monthly payment of \$640.00, due on July 1, 2018. Payment shall be made by certified check, bank check, or money order payable to the "State of New Jersey, General Treasury," and shall be sent to:

Commissioner  
New Jersey Department of Banking and Insurance  
Attn: Jan Allen, Collections

20 West State Street  
P.O. Box 325  
Trenton, NJ 08625

IT IS FURTHER ORDERED AND AGREED that, if Daniel fails to make any scheduled payment within ten days of its due date, the Department may, upon notice to Daniel, declare the entire outstanding balance to be immediately due and payable. Thereafter, the Department may take any action available under the laws of this State to collect the amount outstanding at that time, including post-judgment interest from the date of the judgment, attorneys' fees, and any other remedies available under the law; and

IT IS FURTHER ORDERED AND AGREED that Daniel will pay restitution to the estate of A.C. in the amount of \$318,240.37, the total of the funds from Check 889 and 786; and

IT IS FURTHER ORDERED AND AGREED that any future violation of the Producer Act shall be deemed to be a subsequent violation; and

IT IS FURTHER ORDERED AND AGREED that the provisions of this Consent Order represent a final agency decision that fully resolves Order to Show Cause E14-134.

  
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Peter L. Hartt  
Acting Commissioner



Consented to as to Form, Content, and Entry:

By: Phyllis Daniel  
Phyllis Daniel  
Respondent

Date: 07-17-2015

By: Carnell Johnson  
Carnell Johnson, Esq.  
Attorney for Respondent

Date: 07-20-2015

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: Gordon A. Queenan  
Gordon A. Queenan  
Deputy Attorney General  
Attorney for Peter L. Hartt, Acting  
Commissioner, New Jersey Department of  
Banking and Insurance

Date: 7/28/15