

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)
Kevin Dufficy and FinAuction.com, LLC)
a/k/a Financialize, LLC)
_____)

ORDER TO SHOW CAUSE

TO: Kevin Dufficy
101 Stetson Avenue
Corte Madera, CA 94925

FinAuction.com, LLC a/k/a Financialize.com, LLC
c/o Kevin Dufficy
101 Stetson Avenue
Corte Madera, CA 94925

THIS MATTER, having been opened by the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon information that Kevin Dufficy (“Dufficy”) and FinAuction.com, LLC (“FinAuction”) and/or Financialize, LLC (“Financialize”) (collectively, “Respondents”), may have violated various provisions of the insurance laws of the State of New Jersey; 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 New Jersey Trade Practices Act, N.J.S.A. 17:29B-1 to -19 (“Trade Practices 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, Dufficy is not currently licensed, and has never been licensed, as an insurance producer in New Jersey, or any other state; and

WHEREAS, FinAuction.com LLC d/b/a Financialize.com, LLC is a limited liability company incorporated in Delaware on March 11, 2014, which is not currently licensed, and has never been licensed, as a business entity insurance producer in New Jersey, or any other state; and

WHEREAS, pursuant to N.J.S.A. 17:22A-29, a person shall not sell, solicit or negotiate insurance in this State unless the person is licensed for that line of authority in accordance with the Producer Act; 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)(7), an insurance producer shall not be found to have committed 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. 17B:30-4, no person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance and annuities

or with respect to any person in the conduct of his insurance and annuity business, which is untrue, deceptive or misleading; and

WHEREAS, pursuant to N.J.A.C. 11:2-23.4(a), advertisements shall be truthful and not misleading in fact or by implication. Words or phrases the meaning of which is clear only by implication or by familiar with insurance terminology shall not be used. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception. The advertisement shall not have the capacity or tendency to mislead or deceive; and

WHEREAS, pursuant to N.J.A.C. 11:2-23.6(a), the name of the insurer shall be clearly identified, and if any specific individual policy is advertised it shall be identified either by form number or other appropriate description; 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

FACTS COMMON TO ALL COUNTS

IT APPEARING, that at all relevant times Dufficy was the owner, CEO and/or Managing Director of FinAuction.com LLC a/k/a Financilize.com LLC; and

IT FURTHER APPEARING, that FinAuction.com LLC a/k/a Financilize.com LLC owns and/or controls the websites Annuity.com, Annuities.com and InfoInvestments.com ("Websites"); and

IT FURTHER APPEARING, that the content of the Websites was available to all residents of the State of New Jersey; and

IT FURTHER APPEARING, that on or about November 1, 2016, FinAuction.com LLC a/k/a Financilize.com LLC advertised on the Websites “guaranteed returns” of “up to 7%” with “no market risk;” and

IT FURTHER APPEARING, that FinAuction.com LLC a/k/a Financilize.com LLC failed to specify on its Websites’ advertisements the insurers or annuity policies that would produce “guaranteed returns” of “up to 7%” with “no market risk;” and

IT FURTHER APPEARING, that FinAuction.com LLC a/k/a Financilize.com LLC encouraged viewers of its Websites’ advertisements to input their information to receive personalized comparison reports about annuities; and

IT FURTHER APPEARING, that after consumers inputted their information to a Website, a representative of FinAuction.com LLC a/k/a Financilize.com LLC initiated contact with prospective insureds by telephone and inquired about the “amount of funds to be invested” by the prospective insured; and

COUNT ONE

IT FURTHER APPEARING, that Respondents advertised on their Websites for “guaranteed returns” of “up to 7%” with “no market risk,” and failed to specify on their Websites the insurers or annuity policies that would produce such results, constituting violations of N.J.S.A. 17:22A-40(a)(2), (7), and (8); N.J.S.A. 17B:30-4, N.J.A.C. 11:2-23.4(a), and N.J.A.C. 11:2-23.6(a); and

COUNT TWO

IT FURTHER APPEARING, Respondents solicited insurance without a license in the State of New Jersey by advertising for insurance on their Websites and by initiating contact with prospective insureds by telephone and inquiring about the “amount of funds to be invested,” constituting violations of N.J.S.A. 17:22A-40(a)(2), (8), and N.J.S.A. 17:22A-29; and

NOW, THEREFORE, IT IS on this 14 day of February, 2023,

ORDERED, that Respondents appear and show cause why the Commissioner should not assess a civil penalty of up to \$5,000.00 for the first violation and \$10,000.00 for each subsequent violation of the Producer Act and order Respondents to pay restitution of moneys owed to any person, pursuant to the provisions of N.J.S.A. 17:22A-45(c); and

IT IS FURTHER ORDERED, that Respondents appear and show cause why they should not be required to reimburse the Department for the cost of the investigation and prosecution pursuant to N.J.S.A. 17:22A-45(c); and

IT IS PROVIDED, that Respondents have the right to request an administrative hearing, to be represented by counsel or other qualified representative, at their 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 Respondents, 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 Chandra M. Arkema at: Division of Law, P.O. Box 117, Trenton, NJ 08625. 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