

ORDER TO SHOW CAUSE No. E14-76

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

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Proceedings by the Commissioner of )  
Banking and Insurance, State of New )  
Jersey, to fine, suspend and/or )  
revoke the insurance producer )  
license of Francis P. Gallagher )  
Reference No. 9939744, and Gallagher )  
Financial Services, Corp. Reference )  
No. 0234225. )

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**ORDER TO SHOW CAUSE**

TO: Francis P. Gallagher  
112 Mary Alice CT  
Union, New Jersey 07083

Gallagher Financial Services Corp.  
535 Morris Ave.  
P.O. Box 144  
Springfield, New Jersey 07083

THIS MATTER, having been opened to the Commissioner of Banking and Insurance, ("Commissioner"), State of New Jersey, upon information that FRANCIS P. GALLAGHER ("Gallagher") and GALLAGHER FINANCIAL SERVICES, CORP. ("Gallagher Financial") (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, ("Producer Act") N.J.S.A. 17:22A-26 et seq.; and

WHEREAS, at all relevant time hereto, Respondent Gallagher was licensed as a resident insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-32; and

WHEREAS, at all relevant time hereto, Respondent Gallagher Financial was licensed as a resident insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-32; and

WHEREAS, at all relevant time hereto, Respondent Gallagher was the Designated Responsible Licensed Producer of Gallagher Financial; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(2), an insurance producer shall not violate any insurance law, regulation, subpoena, or order of the Commissioner; 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 in this State or elsewhere; 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; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.2(b), all premiums due the insured shall be paid to the insured or credited to the insured's account within five business days after receipt by the insurance producer from the insurer or other insurance producer or premium finance company; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.3(a), an insurance producer shall establish and maintain a trust account into which shall be deposited cash, checks and other instruments payable to the insurance producer when an insurance producer holds any premiums for more than five business days before remitting the premiums to an insurer or other insurance producer, pursuant to N.J.A.C. 11:17C-2.2(a); and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.3(b), and insurance producer's trust account shall be designated a "Trust Account" on the bank records and those words shall be displayed on the face of the checks on that account; and

COUNT 1

IT APPEARING, that at all times relevant hereto. Respondents were insurance brokers for insured "AG"; and

IT FURTHER APPEARING, that at all times relevant hereto, ABN AMRO Mortgage Group, Inc. ("ABN") was AG's mortgagee and responsible for the payment of AG's homeowner's insurance policy premium; and

IT FURTHER APPEARING, that on or about September 8, 2004, a disbursement check number 311265, in the amount of \$632.00, was mailed to Respondents by ABN for payment of AG's homeowner's insurance policy premium; and

IT FURTHER APPEARING, that on or about November 12, 2004, an additional disbursement check number 574723, in the amount of \$902.98 was mailed to Respondents by ABN for payment of an increase in AG's homeowner's insurance policy premium amount; and

IT FURTHER APPEARING, that on or about November 15, 2004, Respondents deposited ABN checks number 311265 and number 574723 into a Commerce Bank account, with an account number ending in 1054, owned by Gallagher Financial Services Corp. ("Gallagher Financial Account"); and

IT FURTHER APPEARING, that this instance, where Respondents failed to remit a premium sent to Respondents on September 8, 2004, to the insurer within five business days

after receipt of the funds, constitutes violations of N.J.S.A.  
17:22A-40a(2), (4), (8), N.J.A.C. 11:17C-2.1(a), N.J.A.C.  
11:17C-2.2(a); and

**COUNT 2**

IT FURTHER APPEARING, that on or about March 10, 2005,  
AG contacted his insurer and prematurely cancelled his  
homeowners insurance policy brokered by Respondents and paid for  
with checks number 311265 and number 574723; and

IT FURTHER APPEARING, that on or about March 10, 2005,  
AG wrote to Respondents requesting a return of the unearned  
premiums on the prematurely cancelled insurance policy; and

IT FURTHER APPEARING, that on or about March 20, 2005,  
the insurer credited Respondents' account with the unearned  
portion of the premium; and

IT FURTHER APPEARING, that on or about January 4,  
2006, over nine months after receiving the unearned premiums,  
Respondents returned the unearned premium of \$1,014.27 to the  
insured by check number 5461 written from the Gallagher  
Financial Account; and

IT FURTHER APPEARING, that this instance, where  
Respondents failed to return unearned premium to an insured  
within five business days after receipt by the insurance  
producer from the insurer, constitutes violates of N.J.S.A.

17:22A-40a(2), (4), (8), N.J.A.C. 11:17C-2.1(a), N.J.A.C.  
11:17C-2.2(b); and

**COUNT 3**

IT FURTHER APPEARING, that the Gallagher Financial Account was not designated as a "Trust Account" on the account bank records; and

IT FURTHER APPEARING, that checks written from the Gallagher Financial Account, related to the conduct of insurance business, did not identify the account as a "Trust Account" on the face of the checks; and

IT FURTHER APPEARING, that these instances, where Respondents deposited insurance premiums into an account not designated on the bank records as a "Trust Account", and wrote checks related to the conduct of insurance business that did not display the words "Trust Account" on the face of the checks, constitute violations of N.J.S.A. 17:22A-40a(2), (8), N.J.A.C. 11:17C-2.3(a), & (b); and

NOW, THEREFORE, IT IS on this 30<sup>th</sup> day of JUNE, 2014

ORDERED, that pursuant to the provisions of N.J.S.A. 17:22A-40a, Respondents shall appear and show cause why the Commissioner should not place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or any

combination of actions; and

IT IS FURTHER ORDERED, that Respondents shall appear and show cause why the Commissioner should not assess fines up to \$5,000.00 for the first violation and not exceeding \$10,000.00 for each subsequent violation, pursuant to the provisions of N.J.S.A. 17:22A-45c, due to Respondents' failure to comply with New Jersey's insurance laws and regulations; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45c, Respondents shall appear and show cause why they should not be subject to additional penalties, including reimbursement of the costs of investigation and prosecution by the Department of Banking and Insurance; and

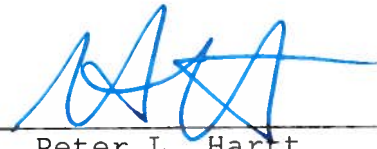
IT IS PROVIDED, that Respondents have the right to request an administrative hearing, to be represented by counsel or other qualified representative, at their own expense, to take testimony, to call or cross-examine witnesses, to have subpoena and subpoena duces tecum issued and to present evidence or 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 the Respondents and the Commissioner shall dispose of this matter in accordance with law. A hearing may be requested by mailing the request to Virgil

Dowtin, Chief of Investigations, New Jersey Department of Banking and Insurance, P.O. Box 329, Trenton, N.J. 08625 or by faxing the request to the Department at (609) 292-5337. A copy of the request for a hearing shall also be sent to Deputy Attorney General Ryan S. Schaffer at fax number (609) 777-3503.

The request shall contain:

- (a) The licensee's 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 the Respondents have no specific knowledge regarding a fact alleged in this 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.



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Peter L. Hartt  
Acting Director of Insurance