

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 Angela Baldwin, Reference No.)
9475713; The Baldwin Agency, LLC,)
Reference No. 129217; Marc A. Berg,)
Reference No. 1186800; Pinkham Agency,)
Inc., Reference No. 1010630; and BFA of New)
York, Inc., Reference No. 1534497)

**CONSENT ORDER
AS TO MARC A. BERG,
PINKHAM AGENCY, INC. AND
BFA OF NEW YORK, INC.**

TO: Marc A. Berg
1487 Andrew Place,
Wantagh, NY 11793-2958

Pinkham Agency
c/o Marc A. Berg
40 Commerce Place, Suite 100,
Hicksville, NY 11801

BFA of New York, Inc.
c/o Marc A. Berg
40 Commerce Place, Suite 100,
Hicksville, NY 11801

This matter, having been opened by the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon issuance of Order to Show Cause No. E16-105 (the “OTSC”) on November 1, 2016, alleging that Angela Baldwin (“Baldwin”), The Baldwin Agency, LLC (“The Baldwin Agency” or “BA”), Marc A. Berg (“Berg”), Pinkham Agency, Inc. (“Pinkham”), and BFA of New York, Inc. (“BFA”) (collectively “Respondents”) may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Baldwin was licensed as a resident insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-32, until the expiration of her license on August 31, 2015; and

WHEREAS, The Baldwin Agency was licensed as a resident business entity insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-32, with Angela Baldwin listed as the designated responsible licensed producer ("DRLP"), until the expiration of its license on May 31, 2014; and

WHEREAS, Berg is licensed as a nonresident insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-34; and

WHEREAS, Pinkham is licensed as a nonresident business entity insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-34, with Berg listed as the DRLP; and

WHEREAS, BFA is licensed as a nonresident business entity insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-34, with Berg listed as the DRLP; 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 et seq. ("Producer Act"); the Producer Licensing regulations, N.J.A.C. 11:17-1.1 et seq.; and the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 et seq., N.J.A.C. 11:17B-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-40a(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-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.S.A. 17:22A-40a(12), an insurance producer shall not knowingly accept insurance business from an unlicensed insurance producer; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(17), an insurance producer shall not knowingly facilitate or assist another person in violating insurance laws; and

WHEREAS, pursuant to N.J.A.C. 11:17A-1.3(a), subject to certain exceptions, no person shall act as an insurance producer or maintain or operate any office in this State for the transaction of the business of an insurance producer, or receive any commission, brokerage fee, compensation or other consideration for services rendered as an insurance producer, without first obtaining a license from the Commissioner granting authority for the kind of insurance transacted; and

WHEREAS, pursuant to N.J.A.C. 11:17A-1.3(b), subject to certain exceptions, any person who solicits, negotiates or sells contracts of insurance in New Jersey shall be considered to be transacting the business of insurance in New Jersey so as to require licensure as an insurance producer; and

WHEREAS, pursuant to N.J.A.C. 11:17A-1.3(c), engaging in a single act or transaction of the business of an insurance producer, or holding oneself out to the public or an insurance producer as being so engaged, shall be sufficient proof of engaging in the business of an insurance producer as to require licensure pursuant to N.J.S.A. 17:22A-26 et seq.; and

WHEREAS, pursuant to N.J.A.C. 11:17A-1.3(d); no licensed insurance producer shall permit or allow any unlicensed person to transact the business of an insurance producer; and

WHEREAS, pursuant to N.J.A.C. 11:17B-3.1(b), any insurance producer charging a fee to an insured or prospective insured shall first obtain from the insured or prospective insured a written agreement, which shall be separate and apart from all other agreements and applications, and shall contain the following provisions and no other provisions: 1. A clear statement of the amount of the fee to be charged and the nature of the service to be provided therefor; 2. A statement that such fees are not a part of the premium charged by the insurance company and that such fees can be charged only if the insured or prospective insured so consents in writing; 3. A clear statement as to whether a commission will be received from the purchase of insurance; and 4. The signature of the insured or prospective insured and the licensed insurance producer and the date of execution of the agreement; and

WHEREAS, pursuant to N.J.A.C. 11:17B-3.2(a)1, an insurance producer may charge a fee for services rendered in the sale or service of personal lines property/casualty or, where the producer is the originating or retail producer, in the sale or service of personal lines surplus lines insurance, provided no service fee for any one policy shall exceed \$20.00; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45c, the Commissioner may assess a fine of up to \$5,000 for the first violation and \$10,000 for each subsequent violation of the Producer Act, and may also order restitution of moneys owed to any person; 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 and Title 17 of the Revised Statutes of 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 States or Tittle 17B of the New Jersey Statutes even if the person's license or registration has been surrendered or has been lapsed by operation of law; and

WHEREAS, on November 1, 2016, the Commissioner issued the OTSC, alleging violations of New Jersey insurance laws by the Respondents as set forth in the following Counts:

COUNT 1

IT FURTHER APPEARING that at all relevant times, Baldwin was a DRLP and CEO/President of BA; and

IT APPEARING that on or about October 31, 2011 and on August 28, 2012, BFA entered into a producer agreement with BA; and

IT FURTHER APPEARING that the two producer agreements had the following provision: “[BA] does not have any right or authority to bind or accept any risk on behalf of BFA or its principals without first obtaining authority from a duly authorized representative of BFA;” and

IT FURTHER APPEARING that the two producer agreements had the following provision: “It is the sole responsibility of [BA] to guarantee prompt payment of all earned premiums to BFA . . . such charges are fully earned on binding and [BA] agrees to pay such charges in full to BFA; and

IT FURTHER APPEARING that at all relevant times, BFA was a licensed insurance producer in New York State; and

IT FURTHER APPEARING that BFA first obtained a New Jersey insurance producer license on October 15, 2013; and

IT FURTHER APPEARING that before BFA was licensed in New Jersey, Baldwin and/or BA placed at least seven (7) insurance contracts for New Jersey insureds through BFA; and

IT FURTHER APPEARING that when receiving deposits of insurance premiums from New Jersey insureds for their insurance policies, BA and/or Baldwin sent these deposit proceeds to BFA; and

IT FURTHER APPEARING that before BFA was licensed as an insurance producer in New Jersey, BFA received at least seven (7) deposits of insurance premiums from BA for insurance policies procured for New Jersey insureds; and

IT FURTHER APPEARING that BFA remitted commission premiums to Baldwin and/or BA for the insurance policies that BA procured for New Jersey insureds through BFA; and

IT FURTHER APPEARING that by placing at least seven (7) insurance applications for New Jersey insureds through BFA before it was licensed to conduct insurance business in New Jersey, Baldwin and BA violated N.J.S.A. 17:22A-40a(2), (8), (12), and (17), and N.J.A.C. 11:17A-1.3(d); and

IT FURTHER APPEARING that each act of placing insurance business through BFA before it was licensed in New Jersey constitutes a separate violation of the Producer Act; and

COUNT 2

IT FURTHER APPEARING that on or about March 1, 2013, Baldwin and/or BA assisted Magnolia Supermarket ("Magnolia"), a New Jersey domiciled corporation, to renew its business owners insurance policy and on or about March 20, 2013, Baldwin and/or BA assisted Magnolia in procuring a workers' compensation insurance policy; and

IT FURTHER APPEARING that at no time did Magnolia and BA have a signed written fee agreement; and

IT FURTHER APPEARING that despite having no such written fee agreement, BA and/or Baldwin charged Magnolia a \$250 service fee for each of the two insurance policies Magnolia purchased; and

IT FURTHER APPEARING that by charging Magnolia a fee without a written and signed fee agreement, Baldwin and BA violated N.J.S.A. 17:22A-40a(2) and (8), and N.J.A.C. 11:17B-3.1(a) and (b); and

COUNT 3

IT FURTHER APPEARING that at no time did BA maintain a business trust account for premiums collected from the insureds for their insurance policies; and

IT FURTHER APPEARING that Baldwin deposited said insurance premiums, including premiums paid by Magnolia, to the BA business non-trust account; and

IT FURTHER APPEARING that by failing to maintain a business trust account for collected premiums, Baldwin and BA violated N.J.S.A. 17:22A-40a(2) and (8), and N.J.A.C. 11:17C-2.3(a); and

IT FURTHER APPEARING that each act of deposit of insurance premiums in a non-trust account constitutes a separate violation of

the Producer Act; and

COUNT 4

IT FURTHER APPEARING that when receiving insurance premiums from insureds for their insurance policies, BA and/or Baldwin issued receipts that did not contain the typed name of the insurance producer, the name of the insurance company or the name, address and telephone number of the insurance agency, in violation of N.J.S.A. 17:22A-40a(2) and (8), and N.J.A.C. 11:17C-2.4(b); and

IT FURTHER APPEARING that each act of issuance of non-compliant cash receipt[s] constitutes a separate violation of the Producer Act; and

COUNT 5

IT FURTHER APPEARING that at all relevant times Berg was the DRLP and CEO of both Pinkham and BFA; and

IT FURTHER APPEARING that prior to BFA obtaining an insurance producer license in New Jersey on October 15, 2013, BFA entered into at least 84 insurance producer agreements with different licensed New Jersey insurance producers; and

IT FURTHER APPEARING that terms and conditions of said 84 insurance producer agreements were identical to the terms and conditions of the agreement between BFA and BA described in Count 1 above; and

IT FURTHER APPEARING that BFA processed insurance applications and collected fees procured by the New Jersey insurance producers with which BFA entered into producer agreements, as described above; and

IT FURTHER APPEARING that before BFA was licensed in New Jersey to engage in insurance producer business, BFA charged New Jersey insureds a service fee of \$25.00 for each personal lines insurance policy processed through BFA; and

IT FURTHER APPEARING that before BFA was licensed in New Jersey to engage in insurance producer business, BFA processed at least 527 insurance applications for New Jersey residents, collected at least \$1,053,958.59 in premiums from the New Jersey insureds, and paid commissions to New Jersey producers in the aggregate amount of \$115,935.45; and

IT FURTHER APPEARING that by conducting insurance producer business without maintaining a New Jersey license, Berg and BFA violated N.J.S.A. 17:22A-40a(2) and (8), N.J.A.C. 11:17A-1.3(a), (b), and (c), and N.J.A.C. 11:17A-1.4(a); and

IT FURTHER APPEARING that each act of transaction of insurance business in New Jersey without being licensed constitutes a separate violation of the Producer Act; and

COUNT 6

IT FURTHER APPEARING that BFA and/or Pinkham charged at least 103 New Jersey insureds a service fee of \$25.00 for each personal lines insurance product placed in the admitted market and processed through BFA and/or Pinkham, which exceeded the \$20.00 limit for such fees; and

IT FURTHER APPEARING that by charging New Jersey insureds for personal lines insurance policies a service fee in excess of \$20.00, Berg, BFA and Pinkham violated N.J.S.A. 17:22A-40a(2) and (8), and N.J.A.C. 11:17B-3.2(a)1; and

IT FURTHER APPEARING that each act of charging of excessive service fees constitutes a separate violation of the Producer Act; and

COUNT 7

IT FURTHER APPEARING that BFA and/or Pinkham entered into 103 separate written fee agreements with the New Jersey insureds described above in Count 6; and

IT FURTHER APPEARING that said written fee agreements did not state that the \$25.00 fee was not part of the premium charged by the insurance company; did not state that such fee can be charged only if the insured or prospective insured consents in writing; lacked a clear statement as to whether a commission will be received from the purchase of insurance; and failed to reflect the signature of the insurance broker; and

IT FURTHER APPEARING that by entering into non-compliant fee agreements, Berg, BFA and Pinkham violated N.J.S.A. 17:22A-40a(2) and (8), and N.J.A.C. 11:17B-3.1(b); and

IT FURTHER APPEARING that each act of entering into non-compliant fee agreement constitutes a separate violation of the Producer Act; and

IT FURTHER APPEARING that Respondents were given notice of the aforesaid charges and an opportunity to contest the charges at a hearing; and

IT FURTHER APPEARING that Baldwin and The Baldwin Agency failed to contest the charges against them as contained in Counts 1 through 4 of the OTSC, and Final Order No. E17-20 was issued against them on March 30, 2017; and

IT FURTHER APPEARING that on November 15, 2016, Berg, Pinkham, and BFA filed an Answer and Request for a Hearing; and

IT FURTHER APPEARING that on January 4, 2017, this matter was transmitted to the Office of Administrative Law for a hearing as to Berg, Pinkham, and BFA; and

IT FURTHER APPEARING that Berg, Pinkham, and BFA admit and agree to take responsibility for the aforementioned violations contained in Counts 5 through 7 of the OTSC; and

IT FURTHER APPEARING that Berg, Pinkham, and BFA have waived their right to a hearing on the above violations and consented to the payment of a fine totaling \$50,000.00; and

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

IT FURTHER APPEARING that Respondents have been cooperative throughout the investigation and institution of this administrative proceeding; and

IT FURTHER APPEARING that good cause exists to enter into this Consent Order and impose a fine pursuant to N.J.S.A. 17:22A-40a and N.J.S.A. 17:22A-45c; and

NOW, THEREFORE, IT IS on this 7th day of DECEMBER, 2017,

ORDERED AND AGREED, that Berg, Pinkham, and BFA admit to the violations of the Producer Act and the regulations governing Insurance Producer Standard of Conduct, as described in Counts 5 through 7 of the OTSC; and

IT IS FURTHER ORDERED AND AGREED, that Berg, Pinkham, and BFA shall pay a fine in the amount of \$50,000.00 to the Department of Banking and Insurance ("Department"); and

IT IS FURTHER ORDERED AND AGREED, that said fine shall be paid by certified check, cashier's check or money order made payable to the "State of New Jersey, General Treasury," upon execution of this Consent Order by Berg, Pinkham, and BFA; and

IT IS FURTHER ORDERED AND AGREED, that the signed Consent Order together with the payment of \$50,000.00 shall be remitted to:

Garen Gazaryan, 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

and

IT IS FURTHER ORDERED AND AGREED, that Berg, Pinkham, and BFA shall issue refunds in the amount equal to service fees charged in excess of the \$20.00 permissible service fee limit on New Jersey personal lines insurance products placed in the admitted market and processed through BFA and/or Pinkham. Said refunds shall be issued directly to each affected New Jersey consumer within 30 days of the date of this Order. Said refunds shall be sent to the last known addresses of each affected New Jersey consumer, and Berg, Pinkham, and BFA shall make diligent attempts to locate said consumers. If Berg, Pinkham, and BFA are unable to locate

the affected New Jersey consumers despite diligent attempts, they shall deposit the respective amounts owed to each affected New Jersey consumer with the New Jersey Unclaimed Property Administration for the benefit of each such person who could not be located. Berg, Pinkham, and BFA shall provide to the Department proof, in a form acceptable to the Department, of the payment of each refund, proof of diligent attempts to locate each affected New Jersey consumer, and proof of deposits into the New Jersey Unclaimed Property Administration within 60 days of the date of this Order; and

IT IS FURTHER ORDERED AND AGREED, that Berg, Pinkham, and BFA shall revise their written fee agreements to make the agreements compliant with N.J.A.C. 11:17B-3.1(b); and

IT IS FURTHER ORDERED AND AGREED, that the provisions of this Consent Order represent a final agency decision and constitute final resolution of the violations contained herein against Respondents.



PETER L. HARTT
Director of Insurance

CONSENTED AS TO FORM, CONTENT, AND ENTRY:



Marc A. Berg

Dated: 11/28/17



Pinkham Agency
By:

Dated: 11/28/17



BFA of New York, Inc.
By:

Dated: 11/28/17




Marc M. Tract, Esq.
Respondents' attorney

Dated: 11/29/17

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

Dated: 12/1/17

By: 

Garen Gazaryan
Deputy Attorney General