

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

	)	ORDER
	)	TO SHOW CAUSE
Proceedings by the Commissioner of	)	
Banking and Insurance, State of New Jersey,	)	
to fine, suspend and/or revoke the insurance	)	
producer license of Fernando Acosta,	)	
Reference No. 1466099.	)	

TO: Fernando Acosta  
86 Warren Street  
Apt 3B  
Nutley, New Jersey 07110-2343

This matter, having been opened by the Commissioner of Banking and Insurance, State of New Jersey (“Commissioner”), upon information that Fernando Acosta (“Acosta” or “Respondent”) may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Respondent was licensed as a resident insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-32(a), until said license expired on or about December 31, 2020; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(d), 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 or Title 17B of the New Jersey Statutes against any person who is under investigation for or charged with a violation of this act or Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes 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-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)(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-40(a)(7), an insurance producer shall not commit 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. 17:22A-40(a)(16), an insurance producer shall not commit any fraudulent act; 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 except as otherwise required or provided by this subchapter; and

WHEREAS, pursuant to N.J.A.C 11:17A-4.8, an insurance producer shall reply, in writing, to any inquiry of the Department of Banking and Insurance relative to the business of insurance within the time requested in said inquiry, or no later than 15 calendar days from the date the inquiry was made or mailed in cases where no response time is given; 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 or may levy a civil penalty 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 of up to \$5,000.00 for the first offense and up to \$10,000.00 for each subsequent offense; additionally, the Commissioner may order restitution of moneys owed any person and reimbursement of costs of the investigation and prosecution; and

**ALLEGATIONS COMMON TO ALL COUNTS**

IT APPEARING, that at all relevant times, Respondent was a licensed insurance producer in the State of New Jersey, and employed as a District Sales Manager with Mutual of Omaha Life Insurance Company ("Mutual of Omaha"); and

IT FURTHER APPEARING, that on or about September 21, 2016, J.W. remitted to Respondent a personal check made payable to "N.A." in the amount of \$8,643.32 for the purpose of purchasing from Mutual of Omaha an annuity contract from the North American Company for Life and Health Insurance ("North American"); and

IT FURTHER APPEARING, that on or about May 3, 2017, J.W. remitted to Respondent a second personal check made payable to "N.A." in the amount of \$6,430.00 for the purpose of purchasing from Mutual of Omaha a second annuity contract issued by the North American; and

IT FURTHER APPEARING, that in or about December 2017, J.W. contacted Mutual of Omaha to report that Respondent had failed to deliver the annuity contracts she had purchased from North American; and

IT FURTHER APPEARING, that Mutual of Omaha investigated J.W.'s claim whereupon Respondent admitted that he did not purchase annuity contracts with J.W.'s checks, but instead

altered the payee on said checks, deposited them into his family's bank accounts and used those funds for his own personal benefit; and

IT FURTHER APPEARING, that on December 7, 2017, Respondent's employment with Mutual of Omaha was terminated, and that on January 25, 2018, Mutual of Omaha directly reimbursed J.W., in full, for the monies misappropriated by the Respondent; and

**COUNT ONE**

IT FURTHER APPEARING, that in connection with the transaction on or about September 21, 2016, Respondent made false statements and misrepresentations to J.W. and, without the consent, knowledge or approval of J.W., did not purchase an annuity contract for J.W., but instead altered J.W.'s check by adding Respondent's wife's name as the "payee," forged his wife's signature and deposited said check into his wife's bank account, and thereafter utilized the funds for Respondent's own personal use and benefit; and

IT FURTHER APPEARING, that Respondent thereby knowingly engaged in fraudulent and deceitful conduct in the course of doing insurance business, and committed acts of fraud, conversion and forgery in the connection with his misappropriation of the monies received from J.W., in violation of N.J.S.A. 17:22A-40(a)(2), (4), (7), (8) and (16); and N.J.A.C 11:17C-2.1(a); and

**COUNT TWO**

IT FURTHER APPEARING, that in connection with the transaction on or about May 3, 2017, Respondent made false statements and misrepresentations to J.W. and, without the consent, knowledge or approval of J.W., did not purchase an annuity contract for J.W., but instead altered J.W.'s check by adding Respondent's name as the "payee," signed and deposited said check into



IT IS PROVIDED, that Respondent has the right to request an administrative hearing, to be represented by counsel or other qualified representative, at their 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 Respondent 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 Dakar R. Ross, Deputy Attorney General, Department of Banking and Insurance, P.O. Box 117, Trenton, New Jersey 08625. The request from each respondent 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 a hearing.



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Marlene Caride  
Commissioner