

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 Gwynne M. Kesselman,     | ) |               |
| Reference No. 1010406; Scott M. Marinelli    | ) |               |
| Reference No. 1003268; and Title Matters,    | ) |               |
| LLC, Reference No. 1014861.                  | ) |               |

TO: Gwynne M. Kesselman  
12 Dobson Road  
Edison, New Jersey 08817-4127

Title Matters, LLC  
c/o Gwynne M. Kesselman  
12 Dobson Road  
Edison, New Jersey 08817-4127

Scott M. Marinelli  
7 Judy Court  
Annandale, New Jersey 0881-3008

Title Matters, LLC  
c/o Scott M. Marinelli  
7 Judy Court  
Annandale, New Jersey 0881-3008

This matter, having been opened by the Commissioner of Banking and Insurance, State of New Jersey (“Commissioner”), upon information that Gwynne M. Kesselman (“Kesselman”), Scott M. Marinelli (“Marinelli”) and Title Matters, LLC (“Title Matters”) (collectively, “Respondents”) may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Kesselman was licensed as a resident title insurance producer pursuant to N.J.S.A. 17:22A-32(a), until said license expired on March 31, 2017; and

WHEREAS, Marinelli was licensed as a resident title insurance producer pursuant to N.J.S.A. 17:22A-32(a), until said license expired on August 31, 2017; and

WHEREAS, Title Matters was licensed as a resident business entity title insurance producer pursuant to N.J.S.A. 17:22A-32(b), until said license expired on May 31, 2015; 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)(3), an insurance producer shall not obtain or attempt to obtain a license through misrepresentation or fraud; 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)(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)(15), an insurance producer shall not intentionally withhold material information or make a material misstatement in an application for a license; 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.S.A. 17:22A-40(a)(18), an insurance producer shall not fail to notify the commissioner within 30 days of the suspension or revocation of any insurance license or authority by a state, other than this State, or the initiation of formal disciplinary proceedings in a state, other than this State, affecting the producer's insurance license; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(19), an insurance producer shall not fail to notify the commissioner within 30 days of the final disposition of any formal disciplinary proceedings initiated against the insurance producer; and

WHEREAS, pursuant to N.J.S.A. 17:22A-42(a), any insurer authorized to transact business in this State may, by written contract, appoint as its agent, a person that holds a valid insurance producer license issued in accordance with the provisions of this act and said contract shall contain the duties, responsibilities and limitations of authority between the agent and the appointing insurer, and the agent shall abide by its terms; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45(a), the commissioner shall have the power to conduct investigations, to administer oaths, to interrogate licensees and others, and to issue subpoenas to any licensee or any other person in connection with any investigation, hearing or other proceeding pursuant to this act, without fee; and

WHEREAS, pursuant to N.J.S.A. 17:22A-47(a), an insurance producer shall report to the commissioner any administrative action taken against the insurance producer in another

jurisdiction or by another governmental agency in this State within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents; and

WHEREAS, pursuant to N.J.S.A. 17:46B-10.1(a), a title insurance producer shall maintain a separate record of all receipts and disbursements as a depository for funds representing closing or settlement proceeds of a real estate transaction, which funds shall be deposited in a separate trust or escrow account; and

WHEREAS, pursuant to N.J.S.A. 17:46B-10.1(b), no title insurance producer or company shall disburse funds representing closing or settlement proceeds of a real estate transaction unless those funds shall have been deposited in a separate trust or escrow account by cash, electronic wire transfer, or certified, cashier's, teller's or bank check, or other collected funds; and

WHEREAS, pursuant to N.J.A.C. 11:1-12.2, active officers shall be held individually responsible for all insurance related conduct of the corporate licensee; 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.A.C. 11:17A-4.10, an insurance producer acts in a fiduciary capacity in the conduct of his or her insurance business; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.5(a) and (b), an insurance producer shall maintain accurate books and records reflecting all insurance-related transactions in which the insurance producer or his employees take part, which records may be maintained by either separate books of record or by one or more consolidated books of record, and each licensee shall maintain

a register of all monies received, deposited, disbursed or withdrawn in connection with an insurance transaction, including, but not limited to transfers and disbursements from a trust account; and all transactions concerning, including the balance of, all interest bearing accounts; 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 RELATED TO ALL RESPONDENTS**

IT APPEARING, that at all relevant times, Title Matters was a business entity engaged in conducting real estate closings on behalf sellers, buyers and/or lenders; and

IT APPEARING, that at all relevant times, Kesselman was the owner, managing member and operator of Title Matters and thus individually responsible for all insurance related conduct of Title Matters pursuant to N.J.A.C. 11:1-12.2; and

IT FURTHER APPEARING, that at all relevant times, Marinelli was the Designated Responsible Licensed Producer ("DRLP") of Title Matters and thus individually responsible for all insurance related conduct of Title Matters pursuant to N.J.A.C. 11:1-12.2; and

IT FURTHER APPEARING, that on or about May 7, 2012, Title Matters entered into a written agreement with North American Title Insurance Company ("North American") whereby Title Matters served as the issuing/settlement agent for North American and was responsible for,

among other things, title examinations and collecting and disbursing funds at real estate closings on behalf of North American and its clients; and

**a. Courtney Lane Closing**

IT FURTHER APPEARING, that in October 2012, Title Matters, as the settlement agent for North American, completed a mortgage refinance transaction for property owners residing on Courtney Lane, Somerset, New Jersey (“Courtney Lane Closing”); and

IT FURTHER APPEARING, that on or about October 12, 2012, Kesselman, on behalf of Title Matters, prepared, executed and submitted to North American a written settlement statement (“Courtney Lane HUD 1”) which itemized all the funds Title Matters had purportedly collected and disbursed, on behalf of North American, to payoff any existing mortgages and liens, and to pay all fees, expenses and charges in connection with the Courtney Lane Closing; and

IT FURTHER APPEARING, that Kesselman signed the Courtney Lane HUD 1 as the “Settlement Agent” and thereby attested to the following statement: “The HUD-1 Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement”; and

IT FURTHER APPEARING, that according to the Courtney Lane HUD 1, Title Matters purportedly collected \$68,154.88 at the closing on October 12, 2012 and then purportedly disbursed said funds on October 17, 2012 to pay off an existing lien held by Chase Mortgage; and

IT FURTHER APPEARING, that Title Matters, in fact, collected the \$68,154.88 at the closing on October 12, 2012 and did not disburse said funds, but instead remitted to Chase Mortgage two monthly installment payments each in the amount of \$818.28 on November 14, 2012 and on December 11, 2012; and

IT FURTHER APPEARING, that in or about January 2013, North American received a notice of claim under its title commitment policy filed by the owners of Courtney Lane asserting that Title Matters had breached its duty as settlement agent in connection with the Courtney Lane Closing; and

IT FURTHER APPEARING, that North American investigated and determined that Title Matters had, in fact, failed to disburse the funds collected to pay off the Chase Mortgage lien and thereafter directed Title Matters to pay the full balance due and owing on said lien to Chase Mortgage, which was done in February 2013; and

**b. Strawberry Lane Closing**

IT FURTHER APPEARING, that in September 2013, Title Matters, as the settlement agent for North American, completed a real estate closing on the sale of property located on Strawberry Lane, Tewksbury Township, New Jersey (“Strawberry Lane Closing”) and

IT FURTHER APPEARING, that on or about September 20, 2013, Marinelli, on behalf of Title Matters, prepared, executed and submitted to North American a written settlement statement (“Strawberry Lane HUD 1”) which itemized all the funds Title Matters had purportedly collected and disbursed, on behalf of North American, to pay off any existing mortgages and liens, and to pay all fees, expenses and charges in connection with the Strawberry Lane Closing; and

IT FURTHER APPEARING, that Marinelli signed the Strawberry Lane HUD 1 as the “Settlement Agent” and thereby attested to the following statement: “The HUD-1 Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement”; and

IT FURTHER APPEARING, that according to the Strawberry Lane HUD 1, on September 20, 2013, Title Matters purportedly collected \$3,372.51 and then disbursed same to Tewksbury Township in payment of the Fourth Quarter property taxes; and

IT FURTHER APPEARING, that Title Matters, in fact, collected \$3,372.51 on September 20, 2013, but did not disburse same on the day of closing; and

IT FURTHER APPEARING, that according to the title commitment requirements for the Strawberry Lane Closing, Title Matters was required to collect and disburse sufficient funds to pay off an existing mortgage lien held by Commerce Bank in the reported sum \$270,646.68, and

IT FURTHER APPEARING, that on the day of closing, Title Matters did not, in fact, collect any funds to satisfy the existing mortgage lien held by Commerce Bank; and

IT FURTHER APPEARING, that by letter dated January 30, 2014, North American received a notice of claim under its title commitment policy filed by the owners of Strawberry Lane asserting that Title Matters had breached its duty as settlement agent in connection with the Strawberry Lane Closing; and

IT FURTHER APPEARING, that North American investigated and determined that Title Matters had, in fact, collected but did not disburse the \$3,372.51 for the Fourth Quarter property taxes and thereafter directed Title Matters to pay said taxes to Tewksbury Township, which was done on February 4, 2014; and

IT FURTHER APPEARING, that North American also determined that Title Matters had, in fact, failed to collect any funds at the closing to satisfy the mortgage lien held by Commerce Bank, and thereafter North American itself paid off said lien directly to Commerce Bank; and



**c. Breach of Agency Contract**

IT FURTHER APPEARING, that on or about February 12, 2014, North American issued to Title Matters a written “Notice of Termination of Agency Contract” which cited the reason for termination as being a “material breach of issuing agency contract”; and

IT FURTHER APPEARING, that on or about February 25, 2014, North American filed a civil lawsuit against Respondents in the New Jersey Superior Court, Somerset County, Chancery Division, alleging causes of action for Breach of Contract, Breach of Fiduciary Duty, Conversion and Negligence; and

IT FURTHER APPEARING, that by letter dated February 26, 2014, North American advised the New Jersey Department of Banking and Insurance (“DOBI”) that it had terminated its agency agreement with Title Matters and provided a copy of the written termination notice issued to Title Matters; and

IT FURTHER APPEARING, that on December 22, 2015, North American and Respondents executed a “Settlement and Release Agreement” whereby Respondents paid to North American the sum of \$140,000.00; and

**d. DOBI Investigation**

IT FURTHER APPEARING, that in or about-March 2014, DOBI opened its investigation into Respondents’ conduct in connection with the Courtney Lane and Strawberry Lane closings; and

IT FURTHER APPEARING, that on or about October 28, 2014 and March 23, 2016, DOBI issued to Marinelli a “Letter of Inquiry” which requested information and documents in connection with its investigation; and

IT FURTHER APPEARING, that Marinelli failed to comply with DOBI's request to provide information and documents; and

IT FURTHER APPEARING, that on or about October 3, 2016, DOBI issued "Subpoena No. 16-02" to Kesselman which requested that she provide specified documents in connection with its investigation; and

IT FURTHER APPEARING, that Kesselman failed to provide the information and documents requested by DOBI's subpoena; and

IT FURTHER APPEARING, that in connection with DOBI's investigation, Respondents were requested but failed to produce any documents or records regarding the Courtney Lane and Strawberry Lane closings; and

IT FURTHER APPEARING, that in connection with DOBI's investigation, DOBI obtained from North American the documents relevant to the Courtney Lane and Strawberry Lane closings, including but not limited to cancelled checks and other bank records; and

IT FURTHER APPEARING, said documents demonstrated that Respondents failed to maintain and/or utilize separate escrow/trust accounts specifically designated for the Courtney Lane Closing or for the Strawberry Lane Closing; and

**ALLEGATIONS RELATED TO MARINELLI ONLY**

**a. Washington Violations**

IT FURTHER APPEARING, that in November 2007, Mortgage Now, Inc. ("Mortgage Now") was licensed by the State of Washington to conduct business as a consumer loan company; and

IT FURTHER APPEARING, that from December 2009 to December 2011, Marinelli was one of the principal owners of Mortgage Now; and

IT FURTHER APPEARING, that in or about December 2012, the Washington Department of Financial Institutions (“Washington”) opened an enforcement action against Mortgage Now, Marinelli and others under Case No. C-10-350-13-FO01 alleging multiple violations of Washington’s consumer loan laws including, but not limited to, the operation unlicensed branch offices; failure to complete loan documents; failure to disclose loan fees and terms; failure to pay required government fees and failure to maintain surety bond; and

IT FURTHER APPEARING, that Washington determined that Marinelli had committed said violations and entered a Final Order on July 29, 2013 whereby Marnelli was barred from participating in consumer loan transactions in the State of Washington for five years and assessed fines and penalties totaling over \$93,000.00; and

**b. Maryland Violations**

IT FURTHER APPEARING, that on or about May 29, 2009, Marinelli was licensed as a non-resident insurance producer by the State of Maryland, which said licensed expired on or about August 31, 2013; and

IT FURTHER APPEARING, that at all relevant times, Marinelli was the owner and president of ESQ Title Agency, LLC (“ESQ Title”), which was licensed as a non-resident business insurance producer on May 29, 2009 by the State of Maryland, which said licensed expired on or about May 28, 2011; and

IT FURTHER APPEARING, that the Maryland Insurance Administration (“Maryland”) opened an enforcement action against Marinelli and ESQ Title under Case No. MIA-2014-10-005 and 006 alleging multiple violations of Maryland’s insurance laws including, but not limited to, for failing to comply with an “Order To Respond,” making false statements on an application for

licensure and on an application for license renewal, and for performing real estate closings without a license; and

IT FURTHER APPEARING, that Maryland determined that Marinelli had committed said violations and, by Order entered on October 3, 2014, Maryland revoked Marinelli's producer license and assessed him a \$6,000 fine; and

**c. North Carolina Violations**

IT FURTHER APPEARING, that in or about 2010, Marinelli was licensed as a non-resident title insurance producer by the State of North Carolina, Department of Insurance ("North Carolina"); and

IT FURTHER APPEARING, that North Carolina opened an enforcement action against Marinelli alleging a violation of North Carolina's insurance laws for failing to timely report the administrative action taken against him by the State of Maryland; and

IT FURTHER APPEARING, that North Carolina determined that Marinelli had committed said violation and assessed Marinelli a fine in the amount \$250.00 under a Settlement Agreement executed on or about August 4, 2015; and

**d. Failure to Disclose Enforcement Actions**

IT FURTHER APPEARING, that in or about February 5, 2016, Marnelli submitted to DOBI an application to renew his license as an insurance producer and

IT FURTHER APPEARING, that in his license renewal application, Marnelli did not disclose the administrative actions against him by Washington, Maryland and North Carolina, and also falsely answered "No" to the question of "Have you been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration which has not been previously reported to this insurance department?"; and

**COUNT ONE**  
**(As to All Respondents)**

IT FURTHER APPEARING, that in connection with the Courtney Lane closing, Respondents, in their role as settlement agent, breached their fiduciary duties owed to North American by executing and submitting to North American a HUD-1 closing statement containing false and misleading information, by failing to collect and/or timely disburse all settlement funds and/or by failing to pay off all outstanding liens and mortgages in connection with said closings, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (8) and (16), N.J.S.A. 17:22A-42(a) and N.J.A.C 11:17A-4.10; and

**COUNT TWO**  
**(As to All Respondents)**

IT FURTHER APPEARING, that in connection with the Strawberry Lane closing, Respondents, in their role as settlement agent, breached their fiduciary duties owed to North American by executing and submitting to North American a HUD-1 closing statement containing false and misleading information, by failing to collect and/or timely disburse all settlement funds and/or by failing to pay off all outstanding liens and mortgages in connection with said closing, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (8) and (16), N.J.S.A. 17:22A-42(a) and N.J.A.C 11:17A-4.10; and

**COUNT THREE**  
**(As to All Respondents)**

IT FURTHER APPEARING, that in connection with the Courtney Lane and Strawberry Lane closings, Respondents failed to deposit the funds representing the closing or settlement proceeds for said real estate transaction in a separate trust or escrow account and failed to disburse said funds from a separate trust or escrow account, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (8) and (16), and N.J.S.A. 17:46B-10.1(a) and (b);and

**COUNT THREE**  
**(As to All Respondents)**

IT FURTHER APPEARING, that Respondents failed to respond to letters of inquiry and/or subpoenas issued by DOBI in connection with its investigation, in violation of N.J.S.A. 17:22A-40(a)(2) and (8), and N.J.A.C. 11:17A-4.8; and

**COUNT FOUR**  
**(As to Marinelli only)**

IT FURTHER APPEARING, that Marinelli failed to notify the Commissioner within 30 days of the final disposition of the administrative actions taken against him by Washington, Maryland and North Carolina, failed to notify the Commissioner within 30 days of the revocation of his insurance producer license by Maryland and failed to notify the Commissioner within 30 days of being barred by Washington from having any involvement in consumer loans transactions, in violation of N.J.S.A. 17:22A-40(a)(2), (8), (18) and (19), and N.J.S.A. 17:22A-47(a); and

**COUNT FIVE**  
**(As to Marinelli only)**

IT FURTHER APPEARING, that in his application to renew his insurance producer license, Marinelli falsely answered “No” to the question of “Have you been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration which has not been previously reported to this insurance department?” when, in fact, there had been prior administrative actions taken against him by Washington, Maryland and North Carolina which were unreported, in violation of N.J.S.A. 17:22A-40(a)(2), (3) and (15); and

**NOW, THEREFORE, IT IS** on this 24 day of August , 2022

ORDERED, that Respondents appear and show cause why their New Jersey insurance producer licenses should not be suspended or revoked pursuant to N.J.S.A. 17:22A-40(a); and

IT IS FURTHER 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 up to \$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 N.J.S.A. 17:22A-45(c); and

IT IS FURTHER ORDERED, that Respondents appear and show cause why, in addition to any other penalty, they should not be required to reimburse the Department for the costs of the investigation and prosecution as authorized by 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 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 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