

CONSENT ORDER No. E14-141

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)
license of Francis P. Gallagher)
Reference No. 9939744, and Gallagher)
Financial Services, Corp. Reference)
No. 0234225.)

CONSENT ORDER

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"), violated various provisions of the insurance laws of the State of New Jersey; and

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

WHEREAS, that at all relevant times, Respondent Gallagher Financial was licensed as a resident business entity insurance producer in this State; 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 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

IT APPEARING, that the Commissioner issued Order to Show Cause No. E14-76 on June 30, 2014, alleging violations of the New Jersey insurance laws by Respondent Gallagher and Respondent Gallagher Financial, as follows:

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

IT FURTHER APPEARING, that Respondent Gallagher and Respondent Gallagher Financial requested a hearing on the allegations contained in the Order to Show Cause, but entered into this Consent Order prior to the Administrative Hearing; and

IT FURTHER APPEARING, that Respondent Gallagher and Respondent Gallagher Financial admit and agree to take responsibility for the Producer Act violations contained in the Order to Show Cause; and

IT FURTHER APPEARING that cause does exist, pursuant to N.J.S.A. 17:22a-40a, and N.J.S.A. 17:22A-45c, to impose civil penalties upon Respondent Gallagher and Respondent Gallagher Financial; and

IT FURTHER APPEARING, that Respondent Gallagher and Respondent Gallagher Financial have waived their rights to a hearing on the above violations and consent to the payment of a fine totaling \$5,000.00, jointly and severally, for the violations contained in Order to Show Cause No. E14-76, pursuant to N.J.S.A. 17:22A-45c; 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 good cause exists to enter into this Consent Order; and

NOW, THEREFORE, IT IS on this 25th day of November, 2014,

ORDERED AND AGREED, that Respondent Gallagher and Respondent Gallagher Financial admit to the charges contained in Order to Show Cause No. E14-76; and

IT IS FURTHER ORDERED AND AGREED, that pursuant to N.J.S.A. 17:22A-45c, Respondent Gallagher and Respondent Gallagher Financial, jointly and severally, shall pay civil penalties in the amount of \$5,000.00 for the Producer Act violations admitted to herein; and

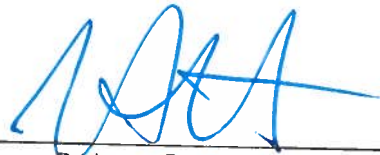
IT IS FURTHER ORDERED AND AGREED, that said civil penalty of \$5,000.00 shall be paid by certified check, cashier's check or money order made payable to the "**State of New Jersey, General Treasury**," due and payable immediately upon the execution of this Consent Order by Respondent Gallagher and Respondent Gallagher Financial ; and

IT IS FURTHER ORDERED AND AGREED, that the signed Consent Order together with the payment of \$5,000.00 shall be remitted to:

Ryan S. Schaffer, 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

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 in Order to Show Cause E14-76 related to Respondent Gallagher and Respondent Gallagher Financial.

IT IS FURTHER ORDERED AND AGREED, that Respondent Gallagher and Respondent Gallagher Financial shall cease and desist from engaging in the conduct that gave rise to this Consent Order.



Peter L. Hartt
Acting Director of Insurance

**Consented to as to
Form, Consent and
Entry:**



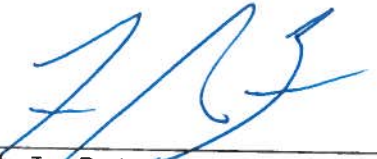
Francis P. Gallagher
Individually

Date: 11-13-14



Gallagher Financial Services Corp.
By: Francis P. Gallagher

Date: 11-13-14




Gerald J. Betzner, Esq.
Attorney for Respondents

Date: 11-13-14

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

Date: November 24, 2014



Ryan S. Schaffer
Deputy Attorney General
Attorney for the New Jersey
Department of Banking and
Insurance