

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 Brian P. Carr, )  
Reference No. 9582303 )

CONSENT  
ORDER

TO: Brian P. Carr  
PO Box 413005  
PMB 81  
Naples, FL 43103

THIS MATTER, having been opened to the Commissioner of Banking and Insurance ("Commissioner"), State of New Jersey, upon information that Brian P. Carr ("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, pursuant to N.J.S.A 17:22A-32, until it expired on October 31, 2012; and

WHEREAS, the Respondent is subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 et seq.; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(16), an insurance producer shall not commit any fraudulent act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-47a, an insurance producer shall report to the Commissioner any administrative action taken against the insurance producer in another jurisdiction or by another government agency in this State within thirty (30) days of the final disposition of the matter; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40d, the Commissioner shall retain authority to enforce the provisions of and impose penalty or remedy authorized by the Producer Act against any person who is under investigation for or charged with a violation of the Producer Act even if the person's license has been surrendered or lapsed by operation of law; and

IT APPEARING that the Commissioner issued Order to Show Cause No. E14-56 on May 9, 2014, alleging violations of the New Jersey insurance laws by Respondent Brian P. Carr, as follows:

COUNT 1

WHEREAS, on or about December 20, 2010, an action was commenced through the entry of a Summary Order by the Chief of the New Jersey Bureau of Securities ("Bureau Chief") against Respondent; and

WHEREAS, the Bureau Chief made the following findings of fact:

1. At all relevant times, Respondent Brian Carr was a New Jersey resident who resided in Chatham, New Jersey.

2. Brian Carr was registered with the New Jersey Bureau of Securities ("Bureau") as an investment adviser representative and agent of New England Securities from approximately 2003 through March 2008.

3. On or about April 1, 2008, Brian Carr was registered with the Bureau as an investment adviser representative of Capital Markets Advisory.

4. Brian Carr was Chairman of Carr Miller Capital from 2008 to 2009.

5. Brian Carr was also chief executive officer, co-chief compliance officer in 2009, and 95% owner of Capital Markets Advisory.

6. Capital Markets Advisory is a New Jersey limited liability company whose office was located in Short Hills, New Jersey, and then Chatham, New Jersey.

7. Capital Markets Advisory also had offices in Little Rock, Arkansas, and Houston, Texas.

8. Until December 21, 2009, Capital Markets Advisory was known as "Carr Miller Capital Investments, LLC," which also did business as "Carr Miller Investments."

9. Capital Markets Advisory registered with the Bureau as an investment adviser in 2008.

10. From 2006 through 2010, Carr Miller Capital sold securities in the form of promissory notes ("Carr Miller Notes") issued by Carr Miller Capital LLC and Carr Miller Real Estate Investments LLC.

11. From 2008 through 2009, Capital Markets Advisory sold securities in the form of promissory notes issued by Carr Miller Capital.

12. The Carr Miller Notes were sold by numerous individuals and entities, including Brian Carr and other agents of Capital Markets Advisory.

13. The investors to whom the Carr Miller Notes were sold included, but were not limited to, clients of Capital Markets Advisory and Brian Carr.

14. The investors who purchased the Carr Miller Notes were located in numerous states, including but not limited to, New Jersey, Texas, Arkansas, North Carolina, California, Arizona, and Pennsylvania.

15. The Carr Miller Notes were not registered with the Bureau, nor were they exempt from registration.

16. Carr Miller Capital and Capital Markets Advisory, through numerous individuals, including Brian Carr, misrepresented to investors that their funds would be: (a) invested in commercial real estate or used to support Carr Miller Capital's real estate business; and/or (b) deposited into an escrow account (and not spent) in order to serve as collateral for lines of credit.

17. Certain investors were not provided with offering materials or disclosure prior to their investment in the Carr Miller Notes.

18. The individuals and/or entities who sold the Carr Miller Notes, including Brian Carr and agents of Capital Markets Advisory, misrepresented and omitted material information regarding, among other things: (a) how investors' funds would be used; (b) the true nature and risk of investing in the Carr

Miller Notes; (c) the financial condition of Carr Miller Capital; (d) the nature and outcome of past investments made by Carr Miller Capital; (e) the ability of Carr Miller Capital to return investors' funds upon request; and (f) conflicts of interest resulting from compensation agreements that existed between Carr Miller Capital and Capital Markets Advisory.

19. The individuals and/or entities who sold the Carr Miller Notes, including Brian Carr and agents of Capital Markets Advisory, presented certain investors with false information regarding certain purported Carr Miller Capital investments, including Indigo-Energy, Inc.

20. The individuals and/or entities who sold the Carr Miller Notes, including Brian Carr and agents of Capital Markets Advisory, told certain investors, at the time of sale, that the promised interest payments and return of principal were guaranteed and that their investments were risk free or "safe."

21. Brian Carr offered and sold approximately \$4,028,000.00 of the approximately \$40 million worth of Carr Miller Notes sold to investors, who ultimately received back over \$2,148,000.00 in principal and interest payments.

22. Less than \$3.95 million of the approximately \$40 million obtained from investors was used in the fashion represented to investors.

23. A significant portion of the \$40 million of investor funds was unlawfully misappropriated to other businesses owned or controlled by Brian Carr and others, while approximately \$11 million was used to provide payments to other investors.

24. A material amount of the approximately \$40 million of investor funds

were, unbeknownst to investors, diverted and misused in various ways for the personal benefit of Brian Carr and others.

25. Pursuant to N.J.S.A. 49:3-58(a)(2)(ii), the Bureau Chief may order deny, suspend or revoke any registration if he finds: (1)"that the order is in the public interest"; and (2) that the applicant or registrant... ii) "has willfully violated or willfully failed to comply with any provisions of this act or any rule or order authorized by this act or has willfully, materially aided others in such conduct."

WHEREAS, based on the foregoing conduct, the Bureau Chief made the following conclusions of law:

1. Brian Carr directly and/or indirectly employed a devise, scheme or artifice to defraud investors in violation of N.J.S.A. 49:3-52(a);

2. Brian Carr made materially false and misleading statements and/or omissions in violation of N.J.S.A. 49:3-52(b);

3. Brian Carr engaged in an act, practice and course of business that operated as a fraud and/or deceit upon investors in violation of N.J.S.A. 49:3-52(c);

4. Capital Markets Advisory directly and/or indirectly employed a device, scheme or artifice to defraud investors in violation of N.J.S.A. 49:3-53(a);

5. Brian Carr unlawfully acted as an agent in representing Carr Miller Capital in effecting or attempting to effect transactions in securities from or in New Jersey without being registered with the Bureau in violation of N.J.S.A. 49:3-56(a); and

6. Brian Carr and Capital Markets Advisory sold securities that were not registered with the Bureau in violation of N.J.S.A. 49:3-60.

IT FURTHER APPEARING that the Bureau's Summary Order dated December 20, 2010 contained conclusions of law which provided that it had proper grounds to revoke the registration of Respondent Brian Carr pursuant to N.J.S.A. 49:3-58(a)(2)(ii); and

IT FURTHER APPEARING that on May 14, 2012 Respondent Brian Carr voluntarily entered into an Administrative Consent Order under OAL Docket No. BOS-00561-11 whereby his registration with the Bureau to act as an "investment advisor representative", as defined by N.J.S.A. 49:3-49(s), or as an agent, was revoked; and

IT FURTHER APPEARING that Respondent Brian Carr committed fraudulent acts when he made material false and misleading statements in the offer and sale of securities as set forth above in violation of N.J.S.A. 17:22A-40a(16); and

#### COUNT 2

IT FURTHER APPEARING that Respondent failed to report the administrative action described above by the Bureau to the Commissioner, constituting violations of N.J.S.A. 17:22A-40a(16), and N.J.S.A. 17:22A-47a; and

#### COUNT 3

WHEREAS, on or about December 15, 2010, Respondent was named as a Defendant in an action brought in the Superior Court, Essex County, bearing docket number ESX-C-228-10, by the Plaintiff, Paula T. Dow, Attorney General of New Jersey, for alleged violations of the New Jersey Uniform Securities Law ("Securities Law"), N.J.S.A. 49:3-47 et seq.; and

IT FURTHER APPEARING that said action was related to the same conduct of Respondent as described above and the Court found the same findings of fact and conclusions of law as set forth in the Consent Order and Final Judgment, dated May 7, 2012; and

IT FURTHER APPEARING that said action sought injunctive relief and money damages; and

WHEREAS, on May 7, 2012, a Consent Order and Final Judgment was entered against Respondent Brian Carr in said action for the amount of \$800,000, representing \$400,000 in restitution, \$300,000 in disgorgement and \$100,000 in civil penalties; and

IT FURTHER APPEARING that Respondent failed to report this Superior Court action to the Department of Banking and Insurance, constituting violations of N.J.S.A. 17:22A-40a(16), and N.J.S.A. 17:22A-47a; and

IT FURTHER APPEARING that on August 15, 2014, Respondent Brian P. Carr answered the charges of the Order to Show Cause; and

IT FURTHER APPEARING that Respondent Brian Carr acknowledges the violation in Count 1 and admits and agrees to take responsibility for the violations contained in Count 2 and Count 3 in the Order to Show Cause; and

IT FURTHER APPEARING that Respondent Brian P. Carr has waived his right to a hearing on the aforementioned violations and consents to the payment of a fine to the Department in the amount of \$2,500.00 and revocation of his expired insurance producer license; and



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

NOW, THEREFORE, IT IS on this 14<sup>th</sup> day of January, 2016,

ORDERED AND AGREED that Respondent Brian P. Carr acknowledges the violation contained in Count 1 and admits to the charges contained in Count 2 and Count 3 in Order to Show Cause No. E14-56; and

IT IS FURTHER ORDERED AND AGREED that, pursuant to N.J.S.A. 17:22A-40, the expired resident insurance producer license of Respondent Brian P. Carr is hereby REVOKED effective upon the execution of this Consent Order by the Commissioner or his designee; and

IT IS FURTHER ORDERED AND AGREED that, pursuant to N.J.S.A. 17:22A-45c, Respondent Brian P. Carr shall pay a fine of \$2,500.00 to the Department for violations admitted herein and described in the Order to Show Cause No. E14-56; and

IT IS FURTHER ORDERED AND AGREED that said fine shall be paid by certified check, cashier's check, money order or other certified funds made payable to the "State of New Jersey - General Treasury," due and payable in full

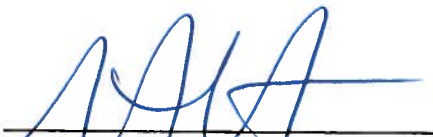
immediately upon execution of this Consent Order by Respondent Brian P. Carr; and

IT IS FURTHER ORDERED AND AGREED that the signed Consent Order together with the fine of \$2,500.00 shall be remitted to:


Carl M. Bornmann, 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 only the violations contained in Order to Show Cause No. E14-56 related to Respondent Brian P. Carr; and

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

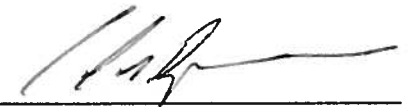
  
\_\_\_\_\_  
PETER L. HARTT  
Director of Insurance

Consented to as to Form,  
Content and Entry:

  
Date: 12/30/15  
Brian P. Carr  
Individually

\_\_\_\_\_  
Date: \_\_\_\_\_  
Peter Byer, Esq.  
Attorney for Respondent  
Brian P. Carr

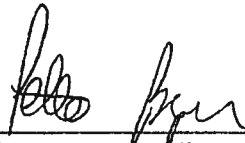
JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

  
Date: 12-9-15  
By: Carl M. Bornmann  
Deputy Attorney General  
Attorney for the New Jersey  
Dept. of Banking and Insurance

Consented to as to Form,  
Content and Entry:


\_\_\_\_\_  
Brian P. Carr  
Individually

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Peter Byer, Esq.  
Attorney for Respondent  
Brian P. Carr

Date: 12/31/15

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

  
\_\_\_\_\_  
By: Carl M. Bornmann  
Deputy Attorney General  
Attorney for the New Jersey  
Dept. of Banking and Insurance

Date: 12-9-15