

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 revoke,)
suspend, and/or fine the public adjuster licenses)
of Construction, Investigations, & Adjustments)
LLC, Reference No. 1593300 and Gene)
Mehmel, Reference No. 9969977)

ORDER TO SHOW CAUSE

TO: Construction, Investigations, & Adjustments, LLC
602 Billings Avenue
Paulsboro, NJ 08066

Gene Mehmel
602 Billings Avenue
Paulsboro, NJ 08066

THIS MATTER having been opened by Richard J. Badolato, Commissioner, New Jersey Department of Banking and Insurance ("Commissioner"), upon information that Construction, Investigations, & Adjustments, LLC ("CI&A") and Gene Mehmel ("Mehmel") (collectively "Respondents"), licensed as public adjusters pursuant to N.J.S.A. 17:22B-5, may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Respondents are subject to the provisions of the Public Adjusters' Licensing Act, N.J.S.A. 17:22B-1 et seq. ("Public Adjusters' Act"), and the regulations promulgated thereunder, N.J.A.C. 11:1-37.1 et seq., and

WHEREAS, pursuant to N.J.S.A. 17:22B-3a, no individual, firm, association or corporation shall act as an adjuster in the State of New Jersey unless authorized to do so by virtue of a license issued or renewed pursuant to the Public Adjusters' Act; and

WHEREAS, pursuant to N.J.S.A. 17:22B-3b, no adjuster shall act on behalf of an insured unless licensed as a public adjuster; and

WHEREAS, pursuant to N.J.S.A. 17:22B-13c and N.J.A.C. 11:1-37.13(a), no individual, firm, association or corporation licensed under the Public Adjusters' Act shall have any right to compensation from any insured for or on account of services rendered to an insured as a public adjuster unless the right to compensation is based upon a written memorandum, signed by the party to be charged and by the adjuster, and specifying or clearly defining the services to be rendered and the amount or extent of the compensation on a form and with such language as the Commissioner may prescribe; and

WHEREAS, pursuant to N.J.S.A. 17:22B-13f and N.J.A.C. 11:1-37.11(a), no individual, firm, association or corporation licensed under the Public Adjusters' Act shall receive, accept or hold any moneys towards the settlement of a claim for loss or damage on behalf of an insured unless the public adjuster deposits the moneys in an interest bearing escrow account in a banking institution or savings and loan association in this State insured by an agency of the federal government; and

WHEREAS, pursuant to N.J.S.A. 17:22B-14a(1) and N.J.A.C. 11:1-37.14(a)1 and 2, a public adjuster shall not violate any provision of the insurance law, including any rules promulgated by the Commissioner, or violate any law in the course of his, or its, dealings as an adjuster; and

WHEREAS, pursuant to N.J.S.A. 17:22B-14a(4) and N.J.A.C. 11:1-37.14(a)4, a public adjuster shall not demonstrate his, or its, incompetency, lack of integrity, bad faith, dishonesty, financial irresponsibility or untrustworthiness to act as a public adjuster; and

WHEREAS, pursuant to N.J.S.A. 17:22B-14a(5) and N.J.A.C. 11:1-37.14(a)5, a public adjuster shall not aid, abet or assist another person in violating any insurance law of this State; and

WHEREAS, pursuant to N.J.A.C. 11:1-37.14(a)3, a public adjuster shall not commit a fraudulent or dishonest act; and

WHEREAS, pursuant to N.J.A.C. 11:1-37.14(a)13, a public adjuster shall not make any misrepresentation of facts or advise any person on questions of law in conjunction with the business of a public adjuster; and

WHEREAS, pursuant to N.J.A.C. 11:1-37.14(a)17, a public adjuster shall not commit any act or omission which the Commissioner determines to be inappropriate conduct by a licensee of this State; and

WHEREAS, pursuant to N.J.S.A. 17:22B-17 and N.J.A.C. 11:1-37.14(b), any person violating any provision of Public Adjusters' Act shall, in addition to any other sanctions provided by law, be liable to a civil penalty of not more than \$2,500 for the first offense and not more than \$5,000 for the second and each subsequent offense; and

WHEREAS, pursuant to N.J.S.A. 56:12-2, consumer contracts shall be written in a simple, clear, understandable and easily readable way; and

WHEREAS, pursuant to N.J.A.C. 11:1-37.13(b)3(ii), the written memorandum or contract between a licensed public adjuster and an insured shall contain a list of services to be

rendered and the maximum fees to be charged, which fees shall be reasonably related to services rendered; and

WHEREAS, pursuant to N.J.A.C. 11:1-37.13(b)4, the written memorandum or contract between a licensed public adjuster and an insured shall conform to the requirements of the Consumer Contracts Act at N.J.S.A. 56:12-1 et seq.; and

WHEREAS, pursuant to N.J.A.C. 11:1-37.13(b)5(i), the written memorandum or contract between a licensed public adjuster and an insured shall prominently include a section which specifies the procedures to be followed by the insured if he or she seeks to cancel the contract, including any requirement for a written notice; and

WHEREAS, pursuant to N.J.A.C. 11:1-37.13(b)5(ii), the written memorandum or contract between a licensed public adjuster and an insured shall prominently include a section which specifies the rights and obligations of the parties if the contract is cancelled at any time; and

WHEREAS, pursuant to N.J.A.C. 11:1-37.13(b)5(iii), the written memorandum or contract between a licensed public adjuster and an insured shall prominently include a section which specifies the costs to the insured or the formula for the calculation of costs to the insured for services rendered in whole or in part; and

COUNT 1

IT APPEARING, that Mehmel was first licensed as a public adjuster in the State of New Jersey on or about November 19, 1999; and

IT FURTHER APPEARING, that CI&A was first licensed as a public adjuster in the State of New Jersey on or about October 1, 2015; and

IT FURTHER APPEARING, that, during the period of October 1, 2012 through October 1, 2015, CI&A entered into at least forty-seven (47) public adjuster contracts with New Jersey insureds; and

IT FURTHER APPEARING, that the contracts discussed in this count were signed by Mehmel on behalf of CI&A; and

IT FURTHER APPEARING, that Mehmel's signing of at least forty-seven (47) contracts with New Jersey insureds on behalf of CI&A when CI&A was not licensed by the Commissioner demonstrates incompetency and assisting another in violating the insurance law of this State, in violation of N.J.S.A. 17:22B-14a(1), (4) and (5), and N.J.A.C. 11:1-37.14(a)1, 2, 4 and 5; and

COUNT 2

IT APPEARING, that, during the period of October 1, 2012 and October 1, 2015, CI&A entered into at least forty-seven (47) public adjuster contracts with New Jersey insureds that did not prominently include a section which specified the procedures to be followed by the insured if he or she seeks to cancel the contract, including the requirement of written notice, the rights and obligations of the parties if the contract is cancelled at any time, and the costs to the insured or the formula for the calculation of costs to the insured for services rendered in whole or in part; and

IT FURTHER APPEARING, that the contracts discussed in this count were signed by Mehmel on behalf of CI&A; and

IT FURTHER APPEARING, that Respondents' failure to prominently include cancellation procedures on its public adjuster contracts constitutes violations of N.J.S.A. 17:22B-

13c, N.J.S.A. 17:22B-14a(1) and (4), N.J.A.C. 11:1-37.13(b)5(i) and (ii), and N.J.A.C. 11:37.14(a)1, 2, 4, and 17; and

COUNT 3

IT APPEARING, that, during the period of October 1, 2012 through October 1 2015, CI&A entered into at least forty-seven (47) public adjuster contracts with New Jersey insureds in which the insured agreed to pay CI&A a fee for its services equal to 15-20% “of the total insurance settlement reached and necessary expenses incurred in connection therewith, all of which shall become due and payable after Proof of Loss (if required) have been submitted and the first insurance company draft or check along with the names of all parties notarized, on all insurance checks or drafts as security for the above stated fee”; and

IT FURTHER APPEARING, that Respondents did not explain the meaning of “total insurance settlement reached” in the contracts described in this count; and

IT FURTHER APPEARING, that Respondents charged insureds a fee based on the total Recoverable Cost Value (“RCV”), before deductions for depreciation and deductibles were subtracted by the insurance company; and

IT FURTHER APPEARING, that Respondents did not charge their fee based on the Actual Cash Value (“ACV”), or monies actually paid by an insurance carrier for a claim; and

IT FURTHER APPEARING, that the insureds described in this count paid Respondents a larger percentage of the funds obtained from their insurance carrier than was bargained for in the public adjuster contract (Attached hereto as Exhibit A is a chart that shows the difference between Respondents’ fees based on RCV and hypothetical fees based on ACV); and

IT FURTHER APPEARING, that Respondents collected \$32,794.63 more in fees from insureds because Respondents charged a percentage of the RCV, instead of a percentage of the ACV; and

IT FURTHER APPEARING, that Respondents' fee structure for public adjuster services has resulted in, and provides the potential for, Respondents' collecting a fee greater than the payments made by the insurance company for the loss; and

IT FURTHER APPEARING, that the contracts discussed in this count were signed by Mehmel on behalf of CI&A; and

IT FURTHER APPEARING, that Respondents' fee structure for public adjuster services, therefore, is not reasonably related to the services rendered, and constitutes a violation of N.J.S.A. 17:22B-13c, N.J.S.A. 17:22B-14a(1) and (4), N.J.A.C. 11:1-37.13(b)3ii, and N.J.A.C. 11:1-37.14(a)1, 4 and 17; and

IT FURTHER APPEARING, that the forty-seven (47) public adjuster contracts referenced in this count, and prepared by Respondents, lack adequate explanation regarding how to calculate Respondents' compensation; and

IT FURTHER APPEARING, that, Respondents' failure to clearly define the amount or extent of Respondents' compensation for public adjuster services constitutes violations of N.J.S.A. 17:22B-13c, N.J.S.A. 17:22B-14a(1) and (4), N.J.A.C. 11:1-37.13(a), N.J.A.C. 11:1-37.14(a)1, 4, 13 and 17, N.J.A.C. 11:1-37.13(b)4 and N.J.S.A. 56:12-2; and

COUNT 4

IT FURTHER APPEARING, that, on or about December 2, 2015, in response to an inquiry from the Commissioner's investigator regarding the handling of insurance proceeds, Respondent CI&A's manager stated via e-mail that the "overwhelming majority of the insurance

checks have Construction, Investigations, & Adjmts name on the check and it is deposited into the CI&A business banking account.”; and

IT FURTHER APPEARING, that a review of Respondent CI&A’s business account from January through December 2013 confirms that insurance proceeds were deposited into the CI&A business account, and checks to clients, minus public adjuster fees, were drafted from the CI&A business account; and

IT FURTHER APPEARING, that Respondents’ accepted insurance proceeds on behalf of insureds and failed to deposit those funds into an interest bearing escrow or trust account, in violation of N.J.S.A. 17:22B-13f, N.J.A.C. 11:1-37.11(a) and N.J.A.C. 11:1-37.14(1) and (4); and

NOW, THEREFORE, IT IS on this 5TH day of MAY, 2017

ORDERED, that Respondents shall appear and show cause why their public adjuster license shall not be suspended or revoked by the Commissioner pursuant to the provisions of N.J.S.A. 17:22B-14a; and

IT IS FURTHER ORDERED, that Respondents shall appear and show cause why the Commissioner should not assess a civil penalty of up to \$2,500.00 for the first violation and not exceeding \$5,000.00 for each subsequent violation of the Public Adjusters’ Act, pursuant to the provisions of N.J.S.A. 17:22B-17; and


IT IS FURTHER ORDERED, that Respondents shall appear and show cause why they should not be subject to restitution to their victims and reimbursement of the costs of investigation and prosecution by the Department of Banking and Insurance; 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 own expense, to

take testimony, to call or cross-examine witnesses, to have subpoena and subpoena duces tecum 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 the 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, New Jersey Department of Banking and Insurance, P.O. Box 329, Trenton, N.J. 08625 or by faxing the request to the Department at (609) 292-5337. A copy of the request for a hearing shall also be sent to Deputy Attorney General Kevin McGowan at fax number (609) 777-3503. The request shall contain:

- (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 the 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 the hearing.



Peter L. Hartt
Director of Insurance

EXHIBIT A

Insured	RCV	Depreciation/ Holdback	Deductible	ACV	Fee Awarded (Misc)	RCV 10% Fee charged	RCV 15% Fee charged	RCV 20% Fee charged	ACV Fee	Difference RCV/ACV REFUNDS
N.C.	192560.47	23494.45		153566.04		192506.04			153566.6	3849.44
SH	2134.81		500	1634.81				426.96	326.96	100
CM	10276.74		500	9776.74				2055.35	1955.35	100
M.M	26071.78	1950.64	1000	23121.14				5206.35	4624.23	582.12
S.H	10472.28		1000	9472.28				2094.60	1894.656	200
...	\$540.61	893.27	1000	9647.14				1708.12	1329.43	378.69
Y.N	15855.11		500	15355.11	2828.54			3171.02	3071.02	100
A.H	30980.48	2679.02	500	17801.46				4196.09	3566.292	635.8
R.D	38576.5	5207.99	1000	33368.51				7715.3	6473.7	1241.6
G.O	19359.38	4684.99	500	14174.30				2126.154	1740.84	739.31
D.M	67244.43	14605.66	1000	55838.77				8375.82	958.62	330.07
L.M	8591.27	1200.46	1000	6390.78				1288.69	500.03	112.49
CM	3333.58		750	2583.58				500.03	387.54	925.8
M.P	23463.3	6198.42	500	16764.88				3440.53	2814.73	1657.35
T.R	29888.28	6669.02	500	29019.26				5983.24	4352.89	492.24
N.S	6943.76	1461.2	1000	4482.56				1388.75	896.51	268.74
K.S	7660.03	1791.68		5268.38				1639	790.26	908.04
N.U	42358.32	3840.19	1000	10698.1	5564.39			3047.66	2139.62	948.87
R.T	40755.51	4743.35	500	35511.16				8051.1	7102.23	689.24
R.V	11635.2	3594.96	1000	7040.24				1745.28	1056.04	406.7
D.T	7931.99	2211.41	500	5220.58				1189.79	783.09	236.52
D.R	1762.94	1576.84		13185.1				2214.44	1977.92	378.19
L.B	12872.15	1360.96	500	15981.19				3574.43	3196.24	522.08
S.E	9601.81	2980.54	500	6121.27				1440.27	918.19	688.46
P.C	45709.44	1362.51	1000	13244.05				2355.98	2001.6	74.99
T.H	9404.06		500	8964.06				1410.6	1335.61	354.5
G.B	7813.54	1863.37	500	5459.17				1172.03	817.52	688.46
...	16042.77	3588.28	1000	11454.52				2406.64	1718.18	151.38
R.B	2698.10	9.20	1000	1688.9				404.72	253.34	74.99
L.E	20244.38		500	19743.38				3036.65	2961.66	458.35
E.C	12030.05	1391.76	1000	9728.29				2406.01	1947.66	157.69
S.C	31613.92	6588.47	1000	24023.45				6322.78	4805.09	200
C.B	5850.14		1000	4856.14				1170.03	970.03	1183.49
R.N	91564.37	4678.47	1000	49794.6				4972.95	3402.23	622
B.N	20571.15	2110	1000	14337.23	2723.4			4114.23	2474.8	588.01
	15314.04	2440.04	500	12374				3062.81		

