

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

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Proceedings by the Commissioner of )  
Banking and Insurance, State of New )  
Jersey, to fine, suspend, and/or revoke the )  
public adjuster licenses of Michael Patrick )  
Diviney, Reference No. 1303106, and )  
Property Damage Adjusters, Inc., Reference )  
No. 1589600, and to fine Samuel A. )  
Demaio and Accupro Environmental, LLC )  
\_\_\_\_\_)

**ORDER TO SHOW CAUSE**

TO: Michael Patrick Diviney  
109 Mount Vernon Court  
Deptford, NJ 08096

Property Damage Adjusters, Inc.  
109 Mount Vernon Court  
Deptford, NJ 08096

Samuel A. Demaio  
5 Kohomo Avenue  
Sicklerville, NJ 08081

Accupro Environmental, LLC  
505 Route 168 Suite D  
Turnersville, NJ 08012

THIS MATTER, having been opened by the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon information that Michael Patrick Diviney (“Diviney”), Property Damage Adjusters, Inc., a New Jersey corporation (“PDA”) (collectively, “the PDA Respondents”), Samuel A. Demaio (“Demaio”), and Accupro Environmental, LLC, a New Jersey limited liability company (“Accupro”) (collectively “the Accupro Respondents”), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Diviney is currently licensed as a public adjuster pursuant to N.J.S.A. 17:22B-5; and

WHEREAS, Property Damage Adjusters is currently licensed as a public adjuster pursuant to N.J.S.A. 17:22B-5; and

WHEREAS, Demaio is a principal of Accupro, a licensed New Jersey home improvement contractor, Number 13VH06680700; and

WHEREAS, the PDA Respondents are subject to the provisions of the New Jersey Public Adjusters' Licensing Act, N.J.S.A. 17:22B-1 to -20 ("Public Adjusters' Act"), the regulations governing the licensing of public adjusters, N.J.A.C. 11:1-37.1 to -37.19, the New Jersey Insurance Fraud Prevention Act, 17:33A-1 to -30 ("Fraud Act"), and the regulations promulgated thereunder, N.J.A.C. 11:16-1.1 to -7.10; 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 laws, including any rules promulgated by the Commissioner, or violate any law in the course of his, or its, dealing as an adjuster; and

WHEREAS, pursuant to N.J.A.C. 11:1-37.14(a)2, the Commissioner may suspend or revoke a public adjuster's license if the public adjuster has violated any law in the course of acting as a public 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 an 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.S.A. 17:22B-13b and N.J.A.C. 11:1-37.13(a) and (b)3, no individual, firm, partnership, association, or corporation licensed as a public adjuster 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 contract or memorandum signed by the party to be charged and the adjuster specifying or clearly defining the services to be rendered and the amount or extent of the compensation; and

WHEREAS, pursuant to N.J.A.C. 11:1-37.13(b)3ii, 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 shall be reasonably related to services rendered; and

WHEREAS, pursuant to N.J.S.A. 17:22B-13 and N.J.A.C. 11:1-37.13(b)3iii, N.J.A.C. 11:1-37.13(c) and (d), and N.J.A.C. 11:1-37.14(a)15, the written memorandum or contract between a licensed public adjuster and an insured shall state the time and date of execution of the contract by each party and no public adjuster shall solicit or enter into any contract or agreement for loss or damage occurring in this State between the hours of 6:00 p.m. and 8:00 a.m. during the 24 hours after the loss has occurred; and

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

WHEREAS, pursuant to N.J.A.C. 11:1-12.2(a), active officers of corporate licensees shall be held individually responsible for all insurance-related conduct of the corporate licensee; and

WHEREAS, pursuant to N.J.S.A. 17:22B-17, any person violating any provision of the Public Adjusters' Act shall, in addition to any other sanctions provided by law, be liable for a civil penalty of not more than \$2,500.00 for the first offense and not more than \$5,000.00 for the second and each subsequent offense; and

WHEREAS, pursuant to N.J.S.A. 17:33A-4a(1), it is a violation of the Fraud Act to present or cause to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim; and

WHEREAS, pursuant to N.J.S.A. 17:33A-4a(3), it is a violation of the Fraud Act to conceal or knowingly fail to disclose the occurrence of any event which affects any person's initial or continued right or entitlement to (a) any insurance benefit or payment or (b) the amount of any benefit or payment to which the person is entitled; and

WHEREAS, pursuant to N.J.S.A. 17:33A-4b, a person violates the Fraud Act if he knowingly assists, conspires with, or urges any person or practitioner to violate any of the provisions of the Fraud Act; and

WHEREAS, pursuant to N.J.S.A. 17:33A-5a and c, violations of the Fraud Act subject the violator to a civil and administrative penalty not to exceed \$5,000.00 for the first offense, not to exceed \$10,000.00 for the second offense and not to exceed \$15,000.00 for each

subsequent offense; moreover, the Commissioner may issue a final order assessing restitution and costs of prosecution, including attorneys' fees in accordance with N.J.A.C. 11:16-7.9(c); and

WHEREAS, pursuant to N.J.S.A. 17:33A-5.1, any person who is found in any legal proceeding to have committed insurance fraud shall be subject to a surcharge in the amount of \$1,000.00; and

### **FACTUAL ALLEGATIONS**

#### **N.A. Contract**

IT APPEARING, that on or about January 26, 2015, the PDA Respondents and New Jersey insured N.A. entered into a contract on Property Damage Adjusters letterhead ("N.A. Contract") for public adjuster's services to advise and assist in the adjustment of an insurance claim for property water damage which occurred at N.A.'s residence in Sicklerville, New Jersey; and

IT FURTHER APPEARING, that the PDA Respondents utilized the N.A. Contract format for at least 80 public adjuster's service contracts with New Jersey insureds between December 18, 2013 and April 7, 2015 (a full list of contracts entered into by the PDA Respondents in the N.A. Contract format is attached as Exhibits A and B hereto); and

IT FURTHER APPEARING, that the contract utilized by the PDA Respondents did not comply with the Public Adjusters' Act, because it: (1) did not specifically or clearly define the services to be rendered; (2) did not state the time the contracts were executed; and (3) did not prominently include a section which specified the procedures to be followed by the insured if he or she sought to cancel the contract, including any requirement for a written notice and the rights and obligations and costs of the parties if the contract was cancelled at any time; and

IT FURTHER APPEARING, that at least 15 of the aforementioned public adjuster's contracts resulted in fees charged that were in excess of 25% of the gross recovery to the insured and thus were not reasonable to the services rendered; and

IT FURTHER APPEARING, that on August 29, 2017, the Department of Banking and Insurance filed OTSC No. 17-82 against the PDA Respondents alleging violations of the Public Adjusters' Act, N.J.S.A. 17:22B-14 and -17 and N.J.A.C. 11:1-37.14(b), relating to the N.A. Contract; and

IT FURTHER APPEARING, that OTSC No. 17-82 is currently pending in the Office of Administrative Law under Doc. No. BKI 04239-2018S; and

**L.M. Claim**

IT FURTHER APPEARING, that on or about October 1, 2015, L.M. experienced storm damage at her residence located in Gloucester Township, New Jersey ("L.M. Residence"); and

IT FURTHER APPEARING, that on or about October 1, 2015, L.M. retained the Accupro Respondents to repair the storm damage; and

IT FURTHER APPEARING, that on or about October 1, 2015, based upon a referral by the Accupro Respondents, L.M. signed a written contract with the PDA Respondents to represent her concerning a claim against her homeowner's insurance policy with Farmers of Salem Insurance Company ("Farmers") for damages incurred in the storm; and

IT FURTHER APPEARING, that on or about October 1, 2015, the PDA Respondents inspected and took photographs of the storm damage incurred at the L.M. Residence; and

IT FURTHER APPEARING, that subsequent to the PDA Respondents' inspection, and before any notice had been given to Farmers of the damage, the Accupro Respondents began the demolition of the L.M. Residence; and

IT FURTHER APPEARING, that an investigation by Farmers revealed that the demolition performed by the Accupro Respondents was unnecessary, was unrelated to the storm damage, and was perpetrated in an attempt to enlarge a future claim to Farmers; and

IT FURTHER APPEARING, that upon request by Farmers to produce the photographs of the L.M. Residence taken prior to when the demolition by the Accupro Respondents occurred, the PDA Respondents destroyed or refused to produce the photographs to Farmers; and

IT FURTHER APPEARING, that the PDA Respondents produced photographs to Farmers that were allegedly taken by the Accupro Respondents of the L.M. Residence prior to the demolition, and these photographs were determined to be falsified; and

IT FURTHER APPEARING, that due to the multiple misrepresentations made by the PDA Respondents to L.M. and to Farmers, L.M. subsequently attempted to terminate the contract with the PDA Respondents, but the PDA Respondents refused her request; and

#### **H./R.C. Claim**

IT FURTHER APPEARING, that on or about July 27, 2016, H.C. and R.C. signed a written contract with the PDA Respondents to represent them concerning an alleged water damage claim against their homeowner's insurance policy with Plymouth Rock Assurance/Palisades Insurance Company ("Plymouth Rock") covering their residence in Voorhees, New Jersey ("H./R.C. Residence"); and

IT FURTHER APPEARING, that the PDA Respondents, without authorization from the insureds or from Plymouth Rock, retained the Accupro Respondents to perform demolition on areas of the H./R.C. Residence that were not included in, and were not part of, the alleged water damage claim; and

IT FURTHER APPEARING, that the PDA Respondents submitted a fraudulent claim to Plymouth Rock for to the H./R.C. Residence that included damages which were intentionally created by the Accupro Respondents at the behest of, or in concert with, the PDA Respondents; and

IT FURTHER APPEARING, that the claim submitted by the PDA Respondents to Plymouth Rock on behalf of H.C. and R.C. was denied, in part, as fraudulent; and

IT FURTHER APPEARING, that H.C. and R.C. made numerous attempts to contact the PDA Respondents without success after the claim was submitted to Plymouth Rock without their approval or consent, and terminated their contract with the PDA Respondents by letter dated December 30, 2016; and

#### **J.M. Claim**

IT FURTHER APPEARING, that on or about October 9, 2016, J.M. retained the Accupro Respondents to perform routine repairs on the skylights and roofing at her residence in Sewell, New Jersey (“J.M. Residence”); and

IT FURTHER APPEARING, that the Accupro Respondents referred the PDA Respondents to J.M. for the purpose of submitting an insurance claim for the routine repairs and maintenance; and

IT FURTHER APPEARING, that on or about October 9, 2016, J.M. signed a written contract with the PDA Respondents to represent her concerning an alleged claim for wind



storm damage against her homeowner's insurance policy with Allstate New Jersey Insurance Company ("Allstate"); and

IT FURTHER APPEARING, that the PDA Respondents and the Accupro Respondents conspired with, encouraged, and/or aided and abetted J.M. to file a fraudulent claim with Allstate for repairs that J.M. claimed were caused by storm damage, but were actually necessitated by routine maintenance, contractor negligence and/or ongoing deterioration; and

IT FURTHER APPEARING, that Allstate denied the claim as fraudulent; and

**COUNT 1 (PDA RESPONDENTS)**

IT FURTHER APPEARING, that the PDA Respondents entered into at least 80 public adjuster's contracts with New Jersey insureds that did not specifically or clearly define the services to be rendered and did not contain the time the contracts were executed, in violation of N.J.S.A. 17:22B-13c and N.J.A.C. 11:1-37.13(b)3ii and iii; and

**COUNT 2 (PDA RESPONDENTS)**

IT FURTHER APPEARING, that the PDA Respondents entered into at least 80 public adjuster's contracts with New Jersey insureds that did not prominently include a section which specified the procedures to be followed by the insureds if they sought to cancel the contract, including any requirement for a written notice and the rights and obligations of the parties if the contract was cancelled at any time, and the costs to the insured of the formula for the calculation of the costs of the insured for services rendered in whole or in part, in violation of N.J.S.A. 17:22B-14a(1) and (4), N.J.A.C. 11:1-37.13(b)5i, ii, and iii, and N.J.A.C. 11:1-37.14(a)1 and 4; and

**COUNT 3 (PDA RESPONDENTS)**

IT FURTHER APPEARING, that the PDA Respondents entered into at least 15 public adjuster's contracts with New Jersey insureds in which the maximum fees to be charged

were not reasonably related to the services rendered, in violation of 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 and 4; and

**COUNT 4 (ALL RESPONDENTS)**

IT FURTHER APPEARING, that the PDA Respondents and the Accupro Respondents conspired to submit a false claim to Farmers for storm damage to the L.M. Residence, and upon discovery of the fraud destroyed evidence of the actual damage and submitted fabricated evidence to Farmers, in violation of N.J.S.A. 17:33A-4a(1), (3) and -4(b); and

IT FURTHER APPEARING, that upon discovery of the conspiracy to submit a fraudulent claim to Farmers, L.M. attempted to terminate her contract with the PDA Respondents, but the PDA Respondents refused to allow L.M. to terminate the contract in violation of N.J.S.A. 17:22B-14a(1), (3) and (4), N.J.A.C. 11:1-37.13(b)5i, ii, and iii, and N.J.A.C. 11:1-37.14(a)1 and 4; and

**COUNT 5 (ALL RESPONDENTS)**

IT FURTHER APPEARING, that the PDA Respondents and the Accupro Respondents conspired to submit a false claim to Plymouth Rock for storm damage to the H./R.C Residence in violation of N.J.S.A. 17:33A-4a(1), (3) and -4(b); and

IT FURTHER APPEARING, that upon discovery of the conspiracy to submit a fraudulent claim to Plymouth Rock, H.C. and R.C. attempted to terminate their contract with the PDA Respondents, but the PDA Respondents refused to allow H.C. and R.C. to terminate the contract in violation of N.J.S.A. 17:22B-14a(1), (3) and (4), N.J.A.C. 11:1-37.13(b)5i, ii, and iii, and N.J.A.C. 11:1-37.14(a)1 and 4; and

**COUNT 6 (ALL RESPONDENTS)**

IT FURTHER APPEARING, that the PDA Respondents and the Accupro Respondents conspired to submit a false claim to Allstate for storm damage to the J.M. Residence in violation of N.J.S.A. 17:33A-4a(1), (3) and -4(b), N.J.S.A. 17:22B-14a(5), and N.J.A.C. 11:37.14(a)5;

NOW, THEREFORE, IT IS on this 3<sup>rd</sup> day of *January* 2019

ORDERED, that the PDA Respondents appear and show cause why the New Jersey public adjuster licenses issued to the PDA Respondents should not be suspended or revoked by the Commissioner and why the PDA Respondents should not be fined up to \$2,500.00 for the first offense and up to \$5,000.00 for the second and each subsequent violation of the Public Adjusters' Act, pursuant to N.J.S.A. 17:22B-14 and -17 and N.J.A.C. 11:1-37.14(b); and

IT IS FURTHER ORDERED, that the PDA Respondents appear and show cause why they should not be ordered to make restitution of fees charged pursuant to N.J.S.A. 17:22B-13c and N.J.A.C. 11:1-37.13(a); and

IT IS FURTHER ORDERED, that the PDA Respondents and the Accupro Respondents appear and show cause why the Commissioner should not assess a civil penalty of up to \$5,000.00 for the first offense, up to \$10,000.00 for the second offense, and up to \$15,000.00 for each subsequent offense of the Fraud Act pursuant to the provisions of N.J.S.A. 17:33A-5c and N.J.A.C. 11:16-7.9(a); and

IT IS FURTHER ORDERED, that the PDA Respondents and the Accupro Respondents appear and show cause why the Commissioner should not impose a \$1,000.00 surcharge against them, each and individually, in accordance with N.J.S.A. 17:33A-5.1; and

IT IS FURTHER ORDERED, that the PDA Respondents and the Accupro Respondents appear and show cause why they should not be subject to additional penalties including attorney's fees, reimbursement of the costs of investigation, prosecution, and restitution authorized pursuant to the provisions of N.J.S.A. 17:22B-14 and -17, N.J.S.A. 17:33A-5c, and N.J.A.C. 11:16-7.9(c); and

IT IS FURTHER ORDERED, that the PDA Respondents appear and show cause why the \$10,000 bond filed with the Commissioner in connection with the PDA Respondents' application(s) for a public adjuster license should not be used for the benefit of any person injured by any willful, malicious, or wrongful act by them in connection with the transaction of business, pursuant to N.J.S.A. 17:22B-12 and N.J.A.C. 11:1-37.9; and

IT IS PROVIDED, that the PDA Respondents and the Accupro 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 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, with a copy to Richard E. Wegryn, DAG, Banking and Insurance Section, R.J. Hughes Justice Complex, 25 Market Street, P.O. Box 117, Trenton, NJ 08625-0117. The request 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 the hearing.

  
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Marlene Caride  
Commissioner