

ORDER TO SHOW CAUSE NO. E14-129

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)
licenses of Louis Macaluso, Ref.)
No. 9716487 and Affinity Title)
Agency, Inc. a/k/a Affinity Title)
Agency, Ref. No. 9720106.)

**ORDER
TO SHOW
CAUSE**

TO: Louis J. Macaluso
524 Cumberland Street, Apt 1
Westfield, New Jersey 07090

-and-

Affinity Title Agency, Inc.
c/o Louis J. Macaluso
524 Cumberland Street, Apt 1
Westfield, New Jersey 07090

-and-

Affinity Title Agency, Inc.
100 South Jefferson Road, 1st Floor
Whippany, New Jersey 07981

-and-

Louis J. Macaluso
SBI # 000505938C
Southern State Correction Facility
4295 Route 47
Delmont, New Jersey 08314

-and-

Affinity Title Agency, Inc.
c/o Louis J. Macaluso
SBI # 000505938C
Southern State Correction Facility
4295 Route 47
Delmont, New Jersey 08314

This matter, having been opened by the Commissioner of Banking and Insurance ("Commissioner"), State of New Jersey, upon information that Louis J. Macaluso ("Macaluso") and Affinity Title Agency, LLC a/k/a Affinity Title Agency ("Affinity"), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Macaluso was previously licensed as a resident insurance producer pursuant to N.J.S.A. 17:22A-32 before his license expired on April 30, 2013; and

WHEREAS, Affinity was previously licensed as a resident insurance producer pursuant to N.J.S.A. 17:22A-32 before its license expired on May 31, 2011; and

WHEREAS, pursuant to N.J.S.A. 17:22A-32b(2), Macaluso was the Designated Responsible Licensed Producer ("DRLP"), owner of Affinity and responsible for the conduct of Affinity; and

WHEREAS, Macaluso and Affinity are subject to the provisions of the New Jersey Insurance Producer Licensing Act ("Producer Act"), N.J.S.A. 17:22A-26, et seq., the Title Insurance Act of 1974 ("Title Act"), N.J.S.A. 17:46B-1 et seq., the regulations governing Producer Licensing, N.J.A.C. 11:17-1

et seq. and the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 et seq. and N.J.A.C. 11:17C-1.1 et seq.; and

WHEREAS, pursuant to N.J.S.A. 17:22A-33f, an insurance producer shall inform the Commissioner, by any means acceptable to the Commissioner, of a change of address within thirty (30) days of the change; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(2), an insurance producer shall not violate any insurance laws, regulations, subpoenas or orders of the Commissioner or of another state's insurance regulator; 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 business practices, or demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business; 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-40d, the Commissioner shall retain the authority to enforce the provisions of, and

impose any 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 or registration has been surrendered or has lapsed by operation of law; and

WHEREAS, pursuant to N.J.S.A. 17:22A-42(a), an agent shall abide by the terms of its agency agreement with an insurer; and

WHEREAS, pursuant to N.J.S.A. 17:46B-10.1a, every title insurance producer licensed pursuant to the Producer Act shall maintain a separate record of all receipts and disbursements as a depository for funds representing closing and settlement proceeds of a real estate transaction, which funds shall be deposited in a separate trust or escrow account, and which shall not be commingled with a producer's or company's own funds or with funds held by a producer or company in any other capacity; and

WHEREAS, pursuant to N.J.A.C. 11:17-2.14(c), submitting a license for cancellation or allowing a license to expire shall not void or terminate any disciplinary proceedings against the licensee, nor prevent imposition of any penalty, ordered restitution or costs; 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-2.1(a), an insurance producer shall hold all premium funds in a fiduciary capacity and shall not misappropriate, improperly convert to the insurance producer's own use or illegally withhold premium funds; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.2(c), all title insurance settlement funds shall be disbursed within five business days after settlement except as determined by the parties; and

WHEREAS, pursuant to N.J.A.C. 11:17-2.7(f)2, a licensee shall advise the Department of Banking and Insurance (the "Department") of any change of residence address within thirty (30) days of the change and maintain a proof of notification for five years or until receipt of a license or other documentation from the Department showing the new address; and

WHEREAS, pursuant to N.J.A.C. 11:17A-4.6, insurance policies received by the insurance producer from an insurer shall be delivered or mailed to the insured with 10 calendar days of their receipt or, if prepared by the insurance producer, shall be delivered to the insured within 30 days of receiving proof that all requirements or exceptions have been satisfactorily disposed of; and

COUNTS 1 to 15

(Macaluso and Affinity)

IT APPEARING that, between March 11, 2011 and May 5, 2011, Respondents Macaluso and Affinity, acting as settlement agents, failed to make required payoffs at fifteen real estate settlements for properties located in Bergen, Essex, Hudson, Hunterdon, Mercer, Morris, Ocean and Sussex Counties in New Jersey; and

IT FURTHER APPEARING that Respondents Macaluso and Affinity failed to disburse to lenders approximately \$2.6 million dollars received at the fifteen real estate closings; and

IT FURTHER APPEARING that on October 31, 2013, Respondent Macaluso plead guilty to a two count Accusation that charged him with Theft by Failure to Make Required Disposition of Property Received in the Second Degree and for Misconduct by a Corporate Official in the Second Degree before the Superior Court of New Jersey, Bergen County, Criminal Division; and

IT FURTHER APPEARING that on January 10, 2014, Respondent Macaluso was convicted and sentenced to ten years in prison for the theft including \$2.6 million dollars entrusted to him as a settlement agent to pay off multiple mortgage loans in connection with the real estate closings he handled; and

IT FURTHER APPEARING that Respondents Macaluso and Affinity improperly withheld, misappropriated and converted escrow funds

belonging to insureds, property owners and lenders received in the course of conducting insurance business, which constitutes fraudulent and dishonest practices and demonstrates incompetence, untrustworthiness and financial irresponsibility in the conduct of insurance business, in violation of N.J.S.A. 17:22A-40a(2), (4), (8) and (16), N.J.A.C. 11:17A-4.10, N.J.A.C. 11:17C-2.1(a) and N.J.S.A. 17:46B-10.1a; and

COUNT 16

(Macaluso and Affinity)

IT FURTHER APPEARING that by misappropriating funds received in the course of insurance business and not disbursing funds in accordance with settlement instructions, Respondents Macaluso and Affinity failed to abide by the terms of its agency agreements with surety companies, in violation of N.J.S.A. 17:22A-42(a); and

COUNT 17

(Macaluso and Affinity)

IT FURTHER APPEARING that Respondents Macaluso and Affinity failed to disburse settlement funds of approximately \$2.6 million dollars received at fifteen New Jersey real estate closings within five (5) days after settlement, in violation of N.J.A.C. 11:17C-2.2(c); and

COUNT 18

(Macaluso and Affinity)

IT FURTHER APPEARING that on April 26, 2011, Respondents Macaluso and Affinity were the settlement agents for the sale and purchase of property located at 1216 River Avenue, Point Pleasant, New Jersey; and

IT FURTHER APPEARING that Respondents Macaluso and Affinity collected a premium in the amount of \$1,606.00 in exchange for the issuance and delivery of an Owners Title Insurance Policy for the coverage amount of \$380,000.00; and

IT FURTHER APPEARING that Respondents Macaluso and Affinity failed to deliver the Owners Title Insurance Policy to the insured, in violation of N.J.A.C. 11:17A-4.6; and

COUNT 19

(Macaluso and Affinity)

IT FURTHER APPEARING that May 14, 2011, Respondents Macaluso and Affinity were the settlement agents for the sale and purchase of property located at 107 Makin Avenue, Point Pleasant, New Jersey; and

IT FURTHER APPEARING that Respondents Macaluso and Affinity collected a premium in the amount of \$2,549.00 in exchange for the issuance and delivery of an Owners Title Insurance Policy for the coverage amount of \$550,00.00; and

IT FURTHER APPEARING that Respondents Macaluso and Affinity failed to deliver the Owners Title Insurance Policy to the insured, in violation of N.J.A.C. 11:17A-4.6; and

COUNT 20

(Macaluso)

IT FURTHER APPEARING that effective May 1, 2011, Macaluso represented to the Department that his residence address was 757 Norman Place, Westfield, New Jersey 07090; and

IT FURTHER APPEARING that on or about September 21, 2011, the property located at 757 Norman Place, Westfield, New Jersey 07090 was sold to another, who then resided at the address; and,

IT FURTHER APPEARING that Macaluso failed to notify the Department within thirty days of his change in residence address, in violation of N.J.S.A. 17:22A-33f, N.J.S.A. 17:22A-40a(2), and N.J.A.C. 11:17-2.7(f)2.

NOW, THEREFORE, IT IS on this ^{7th} day of ^{November}, 2014:

ORDERED that pursuant to the provisions of N.J.S.A. 17:22A-40a, Respondents Macaluso and Affinity shall appear and show cause why their insurance producer licenses shall not be revoked by the Commissioner; and

IT IS FURTHER ORDERED that Respondents Macaluso and Affinity appear and show cause why the Commissioner should not assess fines up to \$5,000.00 for the first violation and not

exceeding \$10,000.00 for each subsequent violation of the Act, pursuant to the provisions of N.J.S.A. 17:22A-45c; and

IT IS FURTHER ORDERED that Respondents Macaluso and Affinity appear and show cause why they should not be subject to additional penalties including reimbursement of the costs of investigation, prosecution and restitution pursuant to N.J.S.A. 17:22A-45c; and

IT IS PROVIDED that Respondents Macaluso and Affinity 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 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 Respondents Macaluso and Affinity, 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, 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 Carl M. Bornmann at fax number (609) 777-3503. The

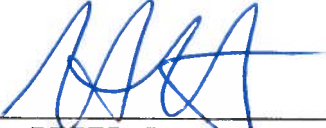
request shall contain:

(A) The licensee's 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 the 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 this 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.



PETER L. HARTT
Acting Director of Insurance