

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner )  
of Banking and Insurance, State ) ORDER  
of New Jersey, to fine and ) TO  
revoke the insurance producer ) SHOW  
license of Phyllis M. Daniel, ) CAUSE  
Reference No. 0301026. )

TO: Phyllis M. Daniel  
5744 Berkshire Valley Rd.  
Oak Ridge, NJ 07438

This matter, having been opened by Kenneth E. Kobylowski, Commissioner of Banking and Insurance, State of New Jersey ("Commissioner"), upon information that Respondent Phyllis M. Daniel, currently licensed as a resident individual insurance producer, pursuant to N.J.S.A. 17:22A-32, may have violated various provisions of the insurance laws of the State of New Jersey; and

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

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(2), an insurance producer shall not violate any insurance laws or regulations; 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; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(10), an insurance producer shall not forge another's name on an application for insurance or on any document related to an insurance transaction; and

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

**ALLEGATIONS COMMON TO ALL COUNTS**

IT APPEARING that, at all times relevant hereto, A.C.'s home in Hudson County, New Jersey was insured by Balboa Insurance Group ("Balboa") and

IT FURTHER APPEARING that, at all times relevant hereto, Respondent Daniel and her husband jointly owned BED Construction Company ("BED"); and

IT FURTHER APPEARING that, on or about August 1, 2008, A.C.'s home was severely damaged by fire; and

IT FURTHER APPEARING that, on or about August 2, 2008, A.C. retained Le Fante & Sarasohn ("Sarasohn") to provide public adjusting services; and

IT FURTHER APPEARING that, following the fire, A.C. contacted her longtime insurance agent, Respondent Daniel; and

IT FURTHER APPEARING that Respondent Daniel and A.C. entered into an oral agreement, pursuant to which BED would repair A.C.'s home; and

**COUNT 1**

IT FURTHER APPEARING that, on September 26, 2008, American Claim Management ("American"), an agent of Balboa, sent Sarasohn a check, number ending in 889, in the amount of \$284,059.20 ("Check 889"), make payable to Sarasohn and A.C.; and

IT FURTHER APPEARING that Check 889 was a partial payment on A.C.'s insurance claim for damages to her Hudson County home stemming from the August 1, 2008 fire; and

IT FURTHER APPEARING that Sarasohn Executive Vice President Kevin Mulligan endorsed Check 889 on behalf of the company; and

IT FURTHER APPEARING that Sarasohn then provided Check 889 directly to Respondent Daniel; and

IT FURTHER APPEARING that Respondent Daniel forged A.C.'s signature on the back of Check 889; and

IT FURTHER APPEARING that, by forging A.C.'s name on the back of Check 889, Respondent Daniel used fraudulent, coercive or dishonest practices and forged another's name on a document related to an insurance transaction, in violation of N.J.S.A. 17:22A-40a(2), (8), (10), and (16); and

#### COUNT 2

IT FURTHER APPEARING that, on or about October 7, 2008, Respondent Daniel deposited Check 889 into the account of her insurance agency, Exodus Financial Services, Inc. ("Exodus"); and

IT FURTHER APPEARING that Respondent Daniel used the funds from Check 889 for her own benefit; and

IT FURTHER APPEARING that Respondent Daniel did not have A.C.'s permission to utilize the funds from Check 889 for Respondent Daniel's own benefit; and

IT FURTHER APPEARING that, by using the funds from Check 889 for her own benefit, rather than to repair A.C.'s home, Respondent Daniel improperly withheld, misappropriated, or converted money received in the course of doing insurance business and demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of insurance business in this State, in violation of N.J.S.A. 17:22A-40a(2), (4), (8), and (16); and

COUNT 3

IT FURTHER APPEARING that, on or about November 11, 2008, American sent Sarasohn another check, number ending in 786, in the amount of \$37,781.17 ("Check 786") made out to Sarasohn and A.C.; and

IT FURTHER APPEARING that Check 786 was also a partial payment on A.C.'s insurance claim for damages to her Hudson County home stemming from the August 1, 2008 fire; and

IT FURTHER APPEARING that Sarasohn endorsed Check 786; and

IT FURTHER APPEARING that A.C. endorsed Check 786 and gave it to Respondent Daniel; and

IT FURTHER APPEARING that, on or about November 25, 2008, Respondent Daniel deposited Check 786 into Exodus' account; and

IT FURTHER APPEARING that the \$37,781.17 was not used to repair A.C.'s Hudson County home; and

IT FURTHER APPEARING that none of the \$37,781.17 was returned to A.C.; and

IT FURTHER APPEARING that, by using the funds from Check 786 for her own personal benefit, Respondent Daniel improperly withheld, misappropriated, or converted money received in the course of doing insurance business and demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of insurance business in this State, in violation of N.J.S.A. 17:22A-40a(2), (4), (8), and (16); and

NOW, THEREFORE, IT IS on this 17<sup>th</sup> day of November 2014

ORDERED that Respondent appear and show cause why the New Jersey insurance producer license issued to her should not be revoked by the Commissioner and why she should not be fined up to \$5,000 for the first offense and not more than \$10,000 for the

second and each subsequent offense, pursuant to N.J.S.A. 17:22A-40 and N.J.S.A. 17:22A-45c; and

IT IS FURTHER ORDERED that Respondent appear and show cause why she should not be subject to additional penalties including reimbursement of the costs of investigation and prosecution authorized pursuant to the provisions of N.J.S.A. 17:22a-45c; and

IT IS PROVIDED that Respondent has the right to request an administrative hearing, to be represented by counsel or other qualified representative, at her 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 the licensee and the Commissioner shall dispose of this matter in accordance with the 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. The request shall contain the following:

- (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 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 licensee 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 a hearing.



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PETER L. HARTT  
Acting Director of  
Insurance