

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of	)	ORDER
Banking and Insurance, State of New Jersey,	)	TO
to fine and revoke the insurance producer	)	SHOW CAUSE
license of John P. DeStefano, Reference No.	)	
9026607	)	

TO: John P. DeStefano  
11 Leaycraft Lane  
Caldwell, NJ 07006

This matter, having been opened by the Commissioner of Banking and Insurance, State of New Jersey (“Commissioner”), upon information that John P. DeStefano (“Respondent”) may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Respondent is currently licensed as a resident insurance producer pursuant to N.J.S.A. 17:22A-32a; and

WHEREAS, Respondent is subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48 (“Producer Act”); the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -30 (“Fraud Act”); the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 to 11:17D-2.8; and the regulations governing Surplus Lines Insurance Procurement Procedure, N.J.A.C. 11:1-33.1 to -33.4; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a, the Commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer’s license or may

levy a civil penalty in accordance with N.J.S.A. 17:22A-45c, or may take any combination of actions, for any one or more of the violations listed in N.J.S.A. 17:22A-40a(1) through (19); and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(2), an insurance producer shall not violate any insurance law, regulation, subpoena, or order of the Commissioner or of another state's insurance regulator; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(4), an insurance produce 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(5), an insurance producer shall not intentionally misrepresent the terms of an actual or proposed insurance contract, policy or application for insurance; 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 in this State or elsewhere; and

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

WHEREAS, pursuant to N.J.A.C. 11:17C-2.1(a), all premium funds shall be held by an insurance producer in a fiduciary capacity and shall not be misappropriated, improperly converted to the insurance producer's own use or illegally withheld; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45c, any person violating any provision of the Producer Act shall be liable to a penalty not exceeding \$5,000.00 for the first offense and not exceeding \$10,000.00 for each subsequent offense; moreover, the Commissioner may order restitution of moneys owed any person and reimbursement of costs of investigation and prosecution; and

WHEREAS, pursuant to N.J.S.A. 17:33A-4a(4)(b), a person violates the Fraud Act if he or she prepares or makes any written or oral statement, intended to be presented to any insurance company or producer for the purpose of obtaining an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to an insurance application or contract; and

WHEREAS, pursuant to N.J.S.A. 17:33A-5a and 5c, violations of the Fraud Act subject the violator to a civil and administrative penalty of not more than \$5,000.00 for the first violation, \$10,000.00 for the second violation and \$15,000.00 for each subsequent violation; moreover, the Commissioner may issue a final order assessing restitution and costs of prosecution, including attorneys' fees; 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

WHEREAS, pursuant to N.J.A.C. 11:1-33.3(a), with certain exceptions, an insurance producer who may be placing coverage with a surplus lines insurance provider on behalf of a New Jersey insured shall first make a diligent effort to place the coverage with an authorized insurer and shall complete the Certification of Effort to Place Risk with Authorized Insurer ("Certification of Effort") found at Appendix Exhibit B to N.J.A.C. 11:1-33.1 to -33.4; and

WHEREAS, pursuant to N.J.A.C. 11:1-33.3(a)3, an insurance producer who may be placing coverage with a surplus lines insurance provider on behalf of a New Jersey insured shall at the time of quotation provide to the prospective insured the Surplus Lines Policy Notification Form (“Notification Form”) found at Appendix Exhibit A-1 to N.J.A.C. 11:1-33.1 to -33.4; and

**ALLEGATIONS COMMON TO ALL COUNTS**

IT APPEARING, that on or about November 7, 2013, DeStefano forged a homeowners insurance application and related documents and submitted a request to Lexington Insurance Company (“Lexington”), a surplus lines insurance company, to provide a quote to bind coverage on a rental property owned by Y.K. in West Orange, New Jersey (the “Property”), without Y.K.’s authorization or knowledge; and

IT FURTHER APPEARING, that, more specifically, on or around November 7, 2013, DeStefano forged Y.K.’s signature on the homeowners insurance application to Lexington; and

IT FURTHER APPEARING, that because Lexington is a surplus lines insurance carrier, DeStefano was required to complete a Certification of Effort, pursuant to N.J.A.C. 11:1-33.3(a); and

IT FURTHER APPEARING, that in the Certification of Effort, DeStefano falsely certified that he was engaged by Y.K. to procure the homeowners insurance; and

IT FURTHER APPEARING, that because Lexington is a surplus lines insurance provider, DeStefano was required to provide a Notification Form to Y.K. for his execution, pursuant to N.J.A.C. 11:1-33.3(a)3, and

IT FURTHER APPEARING, that DeStefano forged Y.K.’s signature on the Notification Form; and

IT FURTHER APPEARING, that on November 7, 2013, Lexington quoted DeStefano \$2,826.66 to bind coverage on the Property, consisting of the annual insurance premium of \$2,589.55 and the total commission to DeStefano of \$237.11; and

IT FURTHER APPEARING, that after obtaining the quote from Lexington, DeStefano contacted Y.K.'s mortgagee on the Property, Ameritrac Business Solutions, and requested that it send him a payment of \$2,826.66 from Y.K.'s funds held in escrow, without Y.K.'s authorization or knowledge; and

IT FURTHER APPEARING, that on November 8, 2013, Ameritrac Business Solutions sent a check in the amount of \$2,826.66 from Y.K.'s funds held in escrow to DeStefano for the homeowners insurance policy; and

IT FURTHER APPEARING, that on November 13, 2013, Lexington issued a homeowners insurance policy to insure the Property; and

IT FURTHER APPEARING, that on or about January 10, 2014, Y.K. received the homeowners insurance policy documents from Lexington; and

IT FURTHER APPEARING, that after learning of the unauthorized insurance application submitted to Lexington by DeStefano, Y.K. requested a full refund from DeStefano for the total amount of \$2,826.66; and

IT FURTHER APPEARING, that, on or about January 24, 2014, DeStefano issued a check in the amount of \$2,141.00 to Y.K., but refused to issue a full refund and kept the commission; and

IT FURTHER APPEARING, that a New Jersey Department of Banking and Insurance ("Department") investigator requested that DeStefano provide certain documents submitted to

and received from Lexington in connection with the unauthorized insurance application, including the original homeowners insurance application signed by Y.K.; and

IT FURTHER APPEARING, that in response to the Department's document request, DeStefano forged yet another insurance application – a Dwelling Fire insurance application – and provided it to the Department claiming it was Y.K.'s application to Lexington; and

IT FURTHER APPEARING, that the signature on the Dwelling Fire insurance application was genuinely of Y.K., but which had not been made in connection with the unauthorized insurance application to Lexington in November 2013; and

IT FURTHER APPEARING, that DeStefano had whited out the material terms of the Dwelling Fire insurance application and inserted new information for those material terms; and

IT FURTHER APPEARING, that DeStefano altered the material terms of the Dwelling Fire application to make it appear to the Department investigator as an original homeowners insurance application submitted to Lexington in November 2013, when in fact, it was not; and

#### **COUNT 1**

IT FURTHER APPEARING, that Respondent submitted a homeowners insurance policy to Lexington to insure the Property without Y.K.'s authorization or knowledge in violation of N.J.S.A. 17:22A-40a(2), (8), and (16); and

#### **COUNT 2**

IT FURTHER APPEARING that, Respondent knowingly submitted a forged homeowners insurance application and supporting documents to Lexington regarding the Property in violation of N.J.S.A. 17:22A-40a(2), (5), (8), (10) and (16); and

**COUNT 3**

IT FURTHER APPEARING that Respondent knowingly submitted a forged insurance application to Lexington regarding the Property in violation of N.J.S.A. 17:33A-4a(4)(b); and

**COUNT 4**

IT FURTHER APPEARING that Respondent submitted a false Certification of Effort, in violation of N.J.S.A. 17:22A-40a(2), (8), and (14), and forged Y.K.'s signature on the Notification Form, in violation of N.J.S.A. 17:22A-40a(2), (8), (10), and (16); and

**COUNT 5**

IT FURTHER APPEARING that, Respondent knowingly completed and produced a forged Dwelling Fire insurance application to the Department to make it appear as the original homeowners insurance application submitted to Lexington, in violation of N.J.S.A. 17:22A-40a(2), (5), (8), (10) and (16); and

**COUNT 6**

IT FURTHER APPEARING that, Respondent failed to refund the full premium Y.K. paid to Lexington for the homeowners insurance policy which Y.K. did not authorize, in violation of N.J.S.A. 17:22A-40a(2), (4), (8) and (16) and N.J.A.C. 11:17C-2.1; and

NOW, THEREFORE, IT IS on this 23<sup>rd</sup> day of March, 2018

ORDERED, that Respondent appear and show cause why his New Jersey insurance producer license should not be suspended or revoked pursuant to N.J.S.A. 17:22A-40; and

IT IS FURTHER ORDERED, that Respondent appear and show cause why the Commissioner should not assess a civil penalty of not more than \$5,000.00 for the first violation and \$10,000.00 for each subsequent violation of the Producer Act and order restitution of moneys owed to any person, pursuant to the provisions of N.J.S.A. 17:22A-45c; and

IT IS FURTHER ORDERED, that Respondent appear and show cause why, in addition to any other penalty, he should not be required to reimburse the Department for the costs of the investigation and prosecution as authorized by N.J.S.A. 17:22A-45c; and

IT IS FURTHER ORDERED, that Respondent appear and show cause why the Commissioner should not assess a penalty of not more than \$5,000 for the first violation, \$10,000 for the second violation, and \$15,000 for each subsequent violation of the Fraud Act and order restitution, pursuant to N.J.S.A. 17:33A-5c; and

IT IS FURTHER ORDERED, that Respondent appear and show cause why the Commissioner should not assess costs of prosecution, including attorneys' fees, pursuant to N.J.S.A. 17:33A-5c; and

IT IS FURTHER ORDERED, that Respondent appear and show cause why the Commissioner should not assess a surcharge in the amount of \$1,000.00 against Respondent, pursuant to N.J.S.A. 17:33A-5.1; and

IT IS PROVIDED, that Respondent has the right to request an administrative hearing, to be represented by counsel or other qualified representative, at his 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 Respondent 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. A copy



of the request for a hearing shall also be sent to Deputy Attorney General Garen Gazaryan at fax number (609) 777-3503. 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 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 a hearing.



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PETER L. HARTT  
Director of Insurance