

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 public)
adjuster licenses of Michael)
Patrick Diviney, Reference No.)
1303106, and Property Damage)
Adjusters, Inc., Reference No.)
1589600)

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

THIS MATTER, having been opened by the Commissioner of Banking and Insurance ("Commissioner"), State of New Jersey, upon information that Michael Patrick Diviney ("Diviney"), and Property Damage Adjusters, Inc. ("PDA"), a New Jersey corporation (collectively, "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, PDA is currently licensed as a public adjuster pursuant to N.J.S.A. 17:22B-5; and

WHEREAS, Respondents are subject to the provisions of the New Jersey Public Adjusters' Licensing Act, N.J.S.A. 17:22B-1 et seq. ("Public Adjusters' Act") and the regulations governing the licensing of public adjusters, N.J.A.C. 11:1-37.1 et seq.; 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, an 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.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 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, an 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-13c and N.J.A.C. 11:1-37.13(a) and (b)3, no individual, firm, 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 memorandum, signed by the party to be charged and 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.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, 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 for the first offense and not more than \$5,000 for the second and each subsequent offense; and

ALLEGATIONS COMMON TO ALL COUNTS

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

IT FURTHER APPEARING that, the N.A. Contract was signed on behalf of PDA by Diviney, who was a licensed public adjuster and who obtained his license on April 29, 2011; and

IT FURTHER APPEARING that, PDA utilized the N.A. Contract format with PDA letterhead signed by Diviney for at least 80 public adjuster contracts with New Jersey insureds between December 18,

2013 and April 7, 2015, as is more specifically set forth and listed individually on Exhibits "A" and "B" hereto; and

IT FURTHER APPEARING that, the contract utilized by Diviney in the name of the unlicensed PDA did not comply with the Public Adjusters' Act, to wit 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 were cancelled at any time; and

IT FURTHER APPEARING that, at least 15 of the aforementioned public adjuster contracts resulted in fees charged that were not reasonably related to the services rendered; and

IT FURTHER APPEARING that, Diviney entered into at least 12 public adjuster contracts in the name of PDA during the period between January 31, 2015 and April 7, 2015, during which time neither he nor PDA were duly licensed in the State of New Jersey pursuant to the Public Adjusters' Act, as is more specifically set forth and listed individually on Exhibit "B" hereto; and

Count 1

IT FURTHER APPEARING that, Respondents entered into at least 80 public adjuster contracts with New Jersey insureds that

did not specifically or clearly define the services to be rendered and did not indicate 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

IT FURTHER APPEARING that, Respondents entered into at least 80 public adjuster 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 were cancelled at any time, and the costs to the insured or 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

IT FURTHER APPEARING that, Respondents entered into at least 15 public adjuster 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

NOW, THEREFORE, IT IS on this 29th day of August, 2017

ORDERED that Respondents appear and show cause why the New Jersey public adjuster licenses issued to Respondents should not be suspended or revoked by the Commissioner and why Respondents should not be fined up to \$2,500 for the first offense and not more than \$5,000 for the second and each subsequent offense under 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

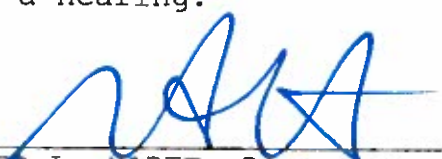
IT IS FURTHER ORDERED that Respondents appear and show cause why they should not be ordered to make restitution of fees charged in violation of N.J.S.A. 17:22B-13c and N.J.A.C. 11:1-37.13(a); and

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 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 Respondents 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.



PETER L. HARTT, Director
Division of Insurance

Exhibit A

NAME	CONTRACT DATE	% CHARGED	ADJUSTER PAID	AMT PD TO INSD	FEE AMOUNT
W.C.	12/18/2013	25%	Yes	3,797.04	949.26
W.C.	12/26/2013	20%	Yes	57,665.80	11533.16
M.F.	12/27/2013	33%	Yes	7,052.73	2327.4
J.M.	1/3/2014	25%	Yes	7,249.03	1812.26
A.F.	1/10/2014	20%	Yes	21,273.72	4254.75
D.M.	1/11/2014	25%	Yes	5,608.45	1402.11
R.D.	1/13/2014	25%	Yes	24,072.38	6018.1
B.F.	1/13/2014	25%	Yes	9,148.96	2287.24
B.G.	1/17/2014	25%	Yes	4,283.06	1070.77
R.J.	1/20/2014	33%	Yes	13,019.55	4296.45
R.J.	1/25/2014	25%	Yes	11,210.85	2802.71
A.B.	1/29/2014	25%	Yes	6,301.90	1575.48
N.J.	1/31/2014	25%	Yes	11,581.13	2895.28
C.H.	2/6/2014	20%	Yes	15,837.65	3167.53
E.M.	2/6/2014	20%	Yes	48,082.16	9616.43
F.G.	2/10/2014	30%	Yes	7,900.36	2370.11
H.P.	2/10/2014	30%	Yes	16,636.70	4991.01
A.B.	2/14/2014	25%	No	Denied	
M.T.	2/27/2014	25%	No	Denied	0
M.T.	2/27/2014	25%	No	Denied	0
D.F.	2/28/2014	25%	No	7,671.48	0
B.J.	3/3/2014	33%	No	Pending	
B.B.	3/6/2014	33%	Yes	2,391.29	789.13
H.P.	3/30/2014	15%	Yes	39,628.75	5,944.31
J.B.	3/30/2014	33%	Yes	5,854.11	1931.86
L.M.	5/1/2014	30%	Yes	9,539.36	2861.81
J.R.	5/1/2014	25%	Yes	8,653.52	2163.38
D.W.	5/2/2014	20%	No	Denied	
S.G.	5/3/2014	15%	Yes	10,000	1500
W.M.	5/3/2014	30%	Yes	9,056.22	2716.87
J.K.	5/13/2014	35%	No	Pending	
B.M.	5/15/2014	25%	Yes	10,733.33	2683.33
L.S.	5/24/2014	25%	Yes	5331.74	1332.94

NAME	CONTRACT DATE	% CHARGED	ADJUSTER PAID	AMT PD TO INSD	FEE AMOUNT
A.K.	5/27/2014	25%	Yes	4,453.74	1113.44
D.H.	6/7/2014	30%	Yes	8,967.37	2690.21
S.F.	6/12/2014	30%	Yes	7,279.74	2183.92
G.P.	6/16/2014	30%	Yes	13,797.14	4139.14
M.R.	6/25/2014	33%	No	6,608.89	0
S.G.	6/27/2014	25%	Yes	3,891.67	972.92
D.S.	7/31/2014	25%	No	9,422.92	0
B.C.	8/1/2014	25%	Yes	5,995.93	1498.98
M.K.	8/11/2014	25%	Yes	8,448.53	2112.13
J.C.	8/14/2014	25%	Yes	6,166.94	1541.74
J.R.	8/16/2014	25%	No	12,318.14	0
M.S.	8/19/2014	25%	Yes	4,462.49	1115.62
M.S.	8/19/2014	25%	Yes	4,196.85	1049.21
M.S.	8/19/2014	25%	Yes	4,738.56	1184.64
N.S.	8/28/2014	25%	Yes	7,591.71	1897.93
F.J.	9/2/2014	25%	No	Denied	
C.D.	9/4/2014	35%	No	Denied	
J.A.	9/17/2014	25%	Yes	2,213.63	553.41
B.G.	9/19/2014	25%	Yes	16,186.05	4046.51
J.A.	9/26/2014	25%	Yes	3,913.58	978.4
C.D.	10/17/2014	25%	Yes	4,566.06	1,141.52
A.A.	10/20/2014	25%	Yes	27,002.60	6750.65
A.A.	10/20/2014	25%	Yes	7,419.02	1854.76
S.S.	10/28/2014	25%	Yes	13,643.25	3410.81
C.W.	11/6/2014	25%	Yes	4,652.11	1163.03
J.M.	11/8/2014	25%	Yes	11,262.52	2815.63
C.R.	11/8/2014	25%	Yes	4,275.94	1068.99
R.M.	11/13/2014	25%	Yes	6,599.21	1649.8
P.Y.	12/30/2014	25%	No	2,434.96	0
S.Y.	1/8/2015	15%	Yes	3,328.25	499.24
Z.T.	1/15/2015	25%	No	Pending	
L.W.	1/16/2015	25%	Yes	3,525.74	881.44
N.A.	1/26/2015	25%	No	\$22,845.60	0

NAME	CONTRACT DATE	% CHARGED	ADJUSTER PAID	AMT PD TO INSD	FEE AMOUNT
A.D.	1/27/2015	25%	Yes	5,163.83	1290.96
M.S.	1/28/2015	20%	No	Denied	
					134898.71

Exhibit B

NAME	CONTRACT DATE	% CHARGED	ADJUSTER PAID	AMT PD TO INSD	FEE AMOUNT
R.M.	2/3/2015	25%	Yes	19,177.92	4794.48
J.L.	2/4/2015	25%	Yes	4,264.54	1066.14
J.E.	2/16/2015	25%	Yes	11,382.55	2845.64
J.W.	2/17/2015	20%	Yes	24,717.52	4943.5
K.M.	2/20/2015	25%	No	1,676.55	0
K.H.	2/27/2015	20%	No	Pending	
L.S.	3/6/2015	25%	No	Pending	
D.M.	3/6/2015	6%	No	Pending	
R.T.	3/11/2015	25%	Yes	5,393.00	1348.25
V.C.	3/24/2015	25%	No	Pending	
T.G.	3/25/2015	25%	No	3,585.26	0
A.A.	4/7/2015	20%	No	Pending	
					14998.01