

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,)	FINAL ORDER AS TO
to fine, suspend and/or revoke the insurance)	SCOTT M. MARINELLI AND
producer license of Gwynne M. Kesselman,)	TITLE MATTERS, LLC ONLY
Reference No. 1010406; Scott M. Marinelli)	
Reference No. 1003268; and Title Matters,)	
LLC, Reference No. 1014861)	

TO: Scott M. Marinelli
1071 Sunny View Road
Mountainside, New Jersey 07092

Title Matters, LLC
c/o Scott M. Marinelli
1071 Sunny View Road
Mountainside, New Jersey 07092

This matter, having been opened by the Commissioner of Banking and Insurance, State of New Jersey (“Commissioner”), upon information that Respondents Scott M. Marinelli (“Marinelli”) and Title Matters, LLC (“Title Matters”) (collectively, “Respondents”) and Gwynne M. Kesselman (“Kesselman”) may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Kesselman was licensed as a resident title insurance producer pursuant to N.J.S.A. 17:22A-32(a), until said license expired on March 31, 2017; and

WHEREAS, Marinelli was licensed as a resident title insurance producer pursuant to N.J.S.A. 17:22A-32(a), until said license expired on August 31, 2017; and

WHEREAS, Title Matters was licensed as a resident business entity title insurance producer pursuant to N.J.S.A. 17:22A-32(b), until said license expired on May 31, 2015; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(d), the Commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by the Producer Act and Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes against any person who is under investigation for or charged with a violation of this act or Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes 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-40(a)(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-40(a)(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-40(a)(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-40(a)(16), an insurance producer shall not commit any fraudulent act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-47(a), an insurance producer shall report to the commissioner any administrative action taken against the insurance producer in another jurisdiction or by another governmental agency in this State within 30 days of the final disposition

of the matter. This report shall include a copy of the order, consent order or other relevant legal documents; and

WHEREAS, pursuant to N.J.S.A. 17:46B-10.1(a), a title insurance producer shall maintain a separate record of all receipts and disbursements as a depository for funds representing closing or 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 funds or with funds held by a producer in any other capacity; and

WHEREAS, pursuant to N.J.A.C 11:17A-4.8, an insurance producer shall reply, in writing, to any inquiry of the Department of Banking and Insurance relative to the business of insurance within the time requested in said inquiry, or no later than 15 calendar days from the date the inquiry was made or mailed in cases where no response time is given; 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.S.A. 17:22A-40(a), 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 for violating the Producer Act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45(c), any person violating the Producer Act is subject to a penalty of up to \$5,000.00 for the first offense and up to \$10,000.00 for each subsequent offense; additionally, the Commissioner may order restitution of moneys owed any person and reimbursement of costs of the investigation and prosecution; and

WHEREAS, the Commissioner issued Order to Show Cause E22-67 on August 24, 2022, alleging violations of New Jersey insurance laws by Respondent as set forth below:

ALLEGATIONS RELATED TO ALL RESPONDENTS

IT APPEARING, that at all relevant times, Title Matters was a business entity engaged in conducting real estate closings on behalf sellers, buyers and/or lenders; and

IT APPEARING, that at all relevant times, Kesselman was the owner, managing member and operator of Title Matters and thus individually responsible for all insurance related conduct of Title Matters pursuant to N.J.A.C. 11:1-12.2; and

IT FURTHER APPEARING, that at all relevant times, Marinelli was the Designated Responsible Licensed Producer ("DRLP") of Title Matters and thus individually responsible for all insurance related conduct of Title Matters pursuant to N.J.A.C. 11:1-12.2; and

IT FURTHER APPEARING, that on or about May 7, 2012, Title Matters entered into a written agreement with North American Title Insurance Company ("North American") whereby Title Matters served as the issuing/settlement agent for North American and was responsible for, among other- things, title examinations and collecting and disbursing funds at real estate closings on behalf of North American and its clients; and

a. COURTNEY LANE CLOSING

IT FURTHER APPEARING, that in October 2012, Title Matters, as the settlement agent for North American, completed a mortgage refinance transaction for property owners residing on Courtney Lane, Somerset, New Jersey ("Courtney Lane Closing"); and

IT FURTHER APPEARING, that on or about October 12, 2012, Kesselman, on behalf of Title Matters, prepared, executed and submitted to North American a written settlement statement ("Courtney Lane HUD 1") which itemized all the funds Title Matters had purportedly collected and disbursed, on behalf of North American, to pay off any existing mortgages and liens, and to pay all fees, expenses and charges in connection with the Courtney Lane Closing; and

IT FURTHER APPEARING, that Kesselman signed the Courtney Lane HUD 1 as the "Settlement Agent" and thereby attested to the following statement: "The HUD-1 Statement which I have prepared is a true and accurate account of this transaction. I have

caused or will cause the funds to be disbursed in accordance with this statement"; and

IT FURTHER APPEARING, that according to the Courtney Lane HUD 1, Title Matters purportedly collected \$68,154.88 at the closing on October 12, 2012 and then purportedly disbursed said funds on October 17, 2012 to pay off an existing lien held by Chase Mortgage; and

IT FURTHER APPEARING, that Title Matters, in fact, collected the \$68,154.88 at the closing on October 12, 2012 and did not disburse said funds, but instead remitted to Chase Mortgage two monthly installment payments each in the amount of \$818.28 on November 14, 2012 and on December 11, 2012; and

IT FURTHER APPEARING, that in on or about January 2013, North American received a notice of claim under its title commitment policy filed by the owners of Courtney Lane asserting that Title Matters had breached its duty as settlement agent in connection with the Courtney Lane Closing; and

IT FURTHER APPEARING, that North American investigated and determined that Title Matters had, in fact, failed to disburse the funds collected to pay off the Chase Mortgage lien and thereafter directed Title Matters to pay the full balance due and owing on said lien to Chase Mortgage, which was done in February 2013; and

b. STRAWBERRY LANE CLOSING

IT FURTHER APPEARING, that in September 2013, Title Matters, as the settlement agent for North American, completed a real estate closing on the sale of property located on Strawberry Lane, Tewksbury Township, New Jersey ("Strawberry Lane Closing") and

IT FURTHER APPEARING, that on or about September 20, 2013, Marinelli, on behalf of Title Matters, prepared, executed and submitted to North American a written settlement statement ("Strawberry Lane HUD 1") which itemized all the funds Title Matters had purportedly collected and disbursed, on behalf of North American, to pay off any existing mortgages and liens, and to pay all fees, expenses and charges in connection with the Strawberry Lane Closing; and

IT FURTHER APPEARING, that Marinelli signed the Strawberry Lane HUD 1 as the "Settlement Agent" and thereby attested to the following statement: "The HUD-1 Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement"; and

IT FURTHER APPEARING, that according to the Strawberry Lane HUD 1, on September 20, 2013, Title Matters purportedly collected \$3,372.51 and then disbursed same to Tewksbury Township in payment of the Fourth Quarter property taxes; and

IT FURTHER APPEARING, that Title Matters, in fact, collected \$3,372.51 on September 20, 2013, but did not disburse same on the day of closing; and.

IT FURTHER APPEARING, that according to the title commitment requirements for the Strawberry Lane Closing, Title Matters was required to collect and disburse sufficient funds to pay off an existing mortgage lien held by Commerce Bank in the reported sum \$270,646.68, and

IT FURTHER APPEARING, that on the day of closing, Title Matters did not, in fact, collect any funds to satisfy the existing mortgage lien held by Commerce Bank; and.

IT FURTHER APPEARING, that by letter dated January 30, 2014, North American received a notice of claim under its title commitment policy filed by the owners of Strawberry Lane asserting that Title Matters had breached its duty as settlement agent in connection with the Strawberry Lane Closing; and

IT FURTHER APPEARING, that North American investigated and determined that Title Matters had, in fact, collected but did not disburse the \$3,372.51 for the Fourth Quarter property taxes and thereafter directed Title Matters to pay said taxes to Tewksbury Township, which was done on February 4, 2014; and

IT FURTHER APPEARING, that North American also determined that Title Matters had, in fact, failed to collect any funds at the closing to satisfy the mortgage lien held by Commerce Bank, and thereafter North American itself paid off said lien directly to Commerce Bank; and

c. Breach of Agency Contract

IT FURTHER APPEARING, that on or about February 12, 2014, North American issued to Title Matters a written "Notice of Termination of Agency Contract" which cited the reason for termination as being a "material breach of issuing agency contract"; and

IT FURTHER APPEARING, that on or about February 25, 2014, North American filed a civil lawsuit against Respondents in the New Jersey Superior Court, Somerset County, Chancery Division, alleging causes of action for Breach of Contract, Breach of Fiduciary Duty, Conversion and Negligence; and

IT FURTHER APPEARING, that by letter dated February 26, 2014, North American advised the New Jersey Department of Banking and Insurance ("DOBI") that it had terminated its agency agreement with Title Matters and provided a copy of the written termination notice issued to Title Matters; and

IT FURTHER APPEARING, that on December 22, 2015, North American and Respondents executed a "Settlement and Release Agreement" whereby Respondents paid to North American the sum of \$140,000.00; and

d. DOBI Investigation

IT FURTHER APPEARING, that in or about-March 2014, DOBI opened its investigation into Respondents' conduct in connection with the Courtney Lane and Strawberry Lane closings; and

IT FURTHER APPEARING, that on or about October 28, 2014 and March 23, 2016, DOBI issued to Marinelli a "Letter of Inquiry" which requested information and documents in connection with its investigation; and

IT FURTHER APPEARING, that Marinelli failed to comply with DOBI's request to provide information and documents; and

IT FURTHER APPEARING, that on or about October 3, 2016, DOBI issued "Subpoena No. 16-02" to Kesselman which requested that she provide specified documents in connection with its investigation; and

IT FURTHER APPEARING, that Kesselman failed to provide the information and documents requested by DOBI's subpoena; and

IT FURTHER APPEARING, that in connection with DOBI's investigation, Respondents were requested but failed to produce any documents or records regarding the Courtney Lane and Strawberry Lane closings; and

IT FURTHER APPEARING, that in connection with DOBI's investigation, DOBI obtained from North American the documents relevant to the Courtney Lane and Strawberry Lane closings, including but not limited to cancelled checks and other bank records; and

IT FURTHER APPEARING, said documents demonstrated that Respondents failed to maintain and/or utilize separate escrow/trust accounts specifically designated for the Courtney Lane Closing or for the Strawberry Lane Closing; and.

ALLEGATIONS RELATED TO MARINELLI ONLY

a. Washington Violations

IT FURTHER APPEARING, that in November 2007, Mortgage Now, Inc. ("Mortgage Now") was licensed by the State of Washington to conduct business as a consumer loan company; and

IT FURTHER APPEARING, that from December 2009 to December 2011, Marinelli was one of the principal owners of Mortgage Now; and

IT FURTHER APPEARING, that in or about December 2012, the Washington Department of Financial Institutions ("Washington") opened an enforcement action against Mortgage Now, Marinelli and others under Case No. C-10-350-13-FO01 alleging multiple violations of Washington's consumer loan laws including, but not limited to, the operation unlicensed branch offices; failure to complete loan documents; failure to disclose loan fees and terms; failure to pay required government fees and failure to maintain surety bond; and

IT FURTHER APPEARING, that Washington determined that Marinelli had committed said violations and entered a Final Order on July 29, 2013 whereby Marinelli was barred from participating in consumer loan transactions in the State of Washington for five years and assessed fines and penalties totaling over \$93,000.00; and.

b. Maryland Violations

IT FURTHER APPEARING, that on or about May 29, 2009, Marinelli was licensed as a non-resident insurance producer by the State of Maryland, which said license expired on or about August 31, 2013; and

IT FURTHER APPEARING, that at all relevant times, Marinelli was the owner and president of ESQ Title Agency, LLC ("ESQ Title"), which was licensed as a non-resident business insurance producer on May 29, 2009 by the State of Maryland, which said license expired on or about May 28, 2011; and

IT FURTHER APPEARING, that the Maryland Insurance Administration ("Maryland") opened an enforcement action against Marinelli and ESQ Title under Case No. MIA-2014-10-005 and 006 alleging multiple violations of Maryland's insurance laws including, but not limited to, for failing to comply with an "Order To Respond," making false statements on an application for licensure and on an application for license renewal, and for performing real estate closings without a license; and

IT FURTHER APPEARING, that Maryland determined that Marinelli had committed said violations and, by Order entered on October 3, 2014, Maryland revoked Marinelli's producer license and assessed him a \$6,000 fine; and

c. North Carolina Violations

IT FURTHER APPEARING, that in or about 2010, Marinelli was licensed as a nonresident title insurance producer by the State of North Carolina, Department of Insurance ("North Carolina"); and

IT FURTHER APPEARING, that North Carolina opened an enforcement action against Marinelli alleging a violation of North Carolina's insurance laws for failing to timely report the administrative action taken against him by the State of Maryland; and

IT FURTHER APPEARING, that North Carolina determined that Marinelli had committed said violation and assessed Marinelli a fine in the amount \$250.00 under a Settlement Agreement executed on or about August 4, 2015; and

d. Failure to Disclose Enforcement Actions

IT FURTHER APPEARING, that in or about February 5, 2016, Marinelli submitted to DOBI an application to renew his license as an insurance producer; and

IT FURTHER APPEARING, that in his license renewal application, Marinelli did not disclose the administrative actions against him by Washington, Maryland and North Carolina, and also falsely answered "No" to the question of "Have you been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration which has not been previously reported to this insurance department?"; and

COUNT ONE

(As to All Respondents)

IT FURTHER APPEARING, that in connection with the Courtney Lane closing, Respondents, in their role as settlement agent, breached their fiduciary duties owed to North American by executing and submitting to North American a HUD-1 closing statement containing false and misleading information, by failing to collect and/or timely disburse all settlement funds and/or by failing to pay off all outstanding liens and mortgages in connection with said closings, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (8) and (16), N.J.S.A. 17:22A-42(a) and N.J.A.C. 11:17A-4.10; and

COUNT TWO

(As to All Respondents)

IT FURTHER APPEARING, that in connection with the Strawberry Lane closing, Respondents, in their role as settlement agent, breached their fiduciary duties owed to North American by executing and submitting to North American a HUD-1 closing statement containing false and misleading information, by failing to collect and/or timely disburse all settlement funds and/or by failing to pay off all outstanding liens and mortgages in connection with said closing, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (8) and (16), N.J.S.A. 17:22A-42(a) and N.J.A.C. 11:17A-4.10; and

COUNT THREE

(As to All Respondents)

IT FURTHER APPEARING, that in connection with the Courtney Lane and Strawberry Lane closings, Respondents failed to deposit the funds representing the closing or settlement proceeds for said real estate transaction in a separate trust or escrow account and failed to disburse said funds from a separate trust or escrow account, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (8) and (16), and N.J.S.A. 17:46B-10.1(a) and (b); and

IT FURTHER APPEARING, that Respondents failed to respond to letters of inquiry and/or subpoenas issued by DOBI in connection with its investigation, in violation of N.J.S.A. 17:22A-40(a)(2) and (8), and N.J.A.C. 11:17A-4.8; and

COUNT FOUR

(As to Marinelli only)

IT FURTHER APPEARING, that Marinelli failed to notify the Commissioner within 30 days of the final disposition of the administrative actions taken against him by Washington, Maryland and North Carolina, failed to notify the Commissioner within 30 days of the revocation of his insurance producer license by Maryland and failed to notify the Commissioner within 30 days of being barred by Washington from having any involvement in consumer loans transactions, in violation of N.J.S.A. 17:22A-40(a)(2), (8), (18) and (19), and N.J.S.A. 17:22A-47(a); and

COUNT FIVE

(As to Marinelli only)

IT FURTHER APPEARING, that in his application to renew his insurance producer license, Marinelli falsely answered "No" to the question of "Have you been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration which has not been previously reported to this insurance department?" when, in fact, there had been prior administrative actions taken against him by Washington, Maryland and North Carolina which were unreported, in violation of N.J.S.A. 17:22A-40(a)(2), (3) and (15); and

IT FURTHER APPEARING, that as set forth in the Certification of Dakar Ross (attached as Exhibit A), on October 1, 2018, a consent order ("Consent Order E18-102") was executed by

and between the Department of Banking and Insurance and Gwynne M. Kesselman wherein Kesselman admitted to the violations referenced in OTSC No. E22-67 and her resident insurance producer license was then revoked and she was barred from reapplying for said license for a period of five years, and therefore this Final Order is being entered against Respondents Scott M. Marinelli and Title Matters, LLC, only and

IT FURTHER APPEARING, that as set forth in the Certification of Dakar Ross (attached as Exhibit A), Respondents were given notice of the aforesaid charges and an opportunity to contest the charges at a hearing pursuant to Order to Show Cause E22-67, which was duly served on both Respondents at the residential address of Marinelli by certified mail, return receipt requested, and regular mail, in accordance with N.J.A.C. 11:17D-2.1(a)(3); and

IT FURTHER APPEARING, that Respondents failed to provide written responses to the charges contained in Order to Show Cause E22-67 within 20 days as provided by N.J.A.C. 11:17D-2.1(d)(1), or at any time thereafter, and therefore Respondents waived their right to a hearing to contest these charges and the charges are deemed admitted, pursuant to N.J.A.C. 11:17D-2.1(b)(1); and

IT FURTHER APPEARING, that in Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987), the Supreme Court established seven factors to be considered in determining the imposition of civil fines in administrative proceedings (“Kimmelman Factors”); and

IT FURTHER APPEARING, that the seven Kimmelman Factors are as follows: (1) the good or bad faith of the defendant; (2) defendant’s ability to pay a civil fine; (3) the amount of profits obtained from the illegal activity; (4) the injury to the public; (5) the duration of the misconduct; (6) the existence of criminal or treble damages actions; and (7) the past violations of defendant; and

IT FURTHER APPEARING, that the Kimmelman Factors apply to this matter as follows:

(1) Respondents showed bad faith by engaging in multiple acts of misrepresentation and incompetence, failed to maintain and produce records, failed to report disciplinary action in other jurisdictions and failed to respond to Department's subpoena; (2) Respondents have not provided any evidence of his inability to pay a civil fine; (3) Respondents received payment of commissions from the closings that were handled improperly and not completed; (4) there was injury to the public in that clients' title and mortgage records were adversely affected; (5) Respondents' violations were isolated incidents committed in 2012 and 2013; (6) no criminal or treble damages actions have been filed against Respondents regarding his illegal activity; and (7) Respondents have no prior violations; and

NOW, THEREFORE, IT IS on this 31st day of August, 2023,

ORDERED, that the charges contained in Counts One through Five of Order to Show Cause E22-67 are deemed admitted by Scott Marinelli and Title Matters, LLC, pursuant to N.J.A.C. 11:17D-2.1(b)(1); and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-40, and N.J.A.C. 11:17D-2.1(b)(2), the expired resident title insurance producer license of Scott Marinelli and the expired resident business entity title insurance producer license of Title Matters, LLC, are hereby **REVOKED** effective upon the execution of this Final Order by the Commissioner; and

IT IS FURTHER ORDERED, that Marinelli and Title Matters, jointly and severally, shall be responsible for the payment of \$25,000 in civil penalties for violations of the Producer Act cited in the Order to Show Cause; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45c and N.J.A.C. 11:1-32.4(b)(20), Marinelli and Title Matters, jointly and severally, shall reimburse the Department of

Banking and Insurance, Division of Insurance Enforcement, for the costs associated with the investigation and prosecution of this matter, as evidenced by the Certification of Costs by Investigator Daxesh Patel (attached as Exhibit B), totaling \$1,550.00. The Commissioner has reviewed the investigative costs application and finds the amount of time to be reasonable; and

IT IS FURTHER ORDERED, that Marinelli and Title Matters, jointly and severally, shall pay the above penalties and costs to the Commissioner of Banking and Insurance, State of New Jersey, P.O. Box 329, Trenton, New Jersey 08625, Attention: Virgil Downtin, Chief of Investigations, by certified check, cashier's check or money order made payable to the "State of New Jersey, General Treasury," within ten days from the date of service of this Order; and

IT IS FURTHER ORDERED, that in the event full payment of the penalty and costs is not made, the Commissioner may exercise any and all remedies available by law, including but not limited to recovery of any unpaid penalties, with post-judgment interest, in accordance with the Penalty Enforcement Law, N.J.S.A. 2A:58-10 to -12; and

IT IS FURTHER ORDERED, that the civil penalty in this Final Order is imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of the public health, safety and welfare, and is not intended to constitute debts which may be limited or discharged in a bankruptcy proceeding; and

IT IS FURTHER ORDERED, that the provisions of this Final Order represent a final agency decision and constitute a final resolution of the allegations contained in Order to Show Cause No. E22-67 against Marinelli and Title Matters.



Justin Zimmerman
Acting Commissioner