

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

CONSENT ORDER

TO:

Michael Patrick Diviney
109 Mount Vernon Court
Deptford, New Jersey 08096

Property Damage Adjusters, Inc.
109 Mount Vernon Court
Deptford, New Jersey 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 in the State of New Jersey,
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;

WHEREAS, Respondents are subject to the provisions of the New Jersey Public Adjusters' Licensing Act, N.J.S.A. 17:22B-1 to -20 ("Public Adjusters' Act"), and the regulations governing the licensing of public adjusters, N.J.A.C. 11:1-37.1 to -37.19; 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 laws, including any rules promulgated by the Commissioner, in the course of his, or its, dealings as an adjuster; and

WHEREAS, pursuant to N.J.S.A. 17:22B-13b 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 contract or memorandum signed by the party to be charged and the adjuster specifying or clearly defining the services to be rendered and the amount or extent of the compensation; 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, 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

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 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

WHEREAS, the Commissioner issued Order to Show Cause E17-82 ("OTSC E17-82") on August 29, 2017, alleging violations of New Jersey insurance laws by Respondents as set forth in the following Counts:

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 ONE

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 TWO

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 THREE

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

WHEREAS, Respondents were given notice of the aforesaid allegations and an opportunity to contest them at a hearing; and

WHEREAS, on or about January 16, 2018, Respondents filed an Answer and Request for Hearing to OTSC E17-82, and this matter was transmitted to the Office of Administrative Law as a contested matter bearing OAL Docket No. BKI 04239-18 ("BKI 04239-18"); and

WHEREAS, the Department withdrew Count 3 of OTSC E17-82; and

WHEREAS, on December 21, 2021, the ALJ issued an Initial Decision/Cross-Motions for Summary Decision under BKI-4239-18 (OTSC E17-82) (1) granting summary decision as to Counts 1 and 2; (2) denying Respondents' cross-motion for summary decision; and (3) affirming that Count 3 was withdrawn; and

WHEREAS, on June 8, 2022, the Commissioner issued a Final Order and Decision (Order E22-48) adopting the findings and conclusions set forth in the Initial Decision; and

WHEREAS, Respondents filed an appeal of the Commissioner's Final Order and Decision (E22-48); and

WHEREAS, on September 11, 2023 the parties appeared and argued before the New Jersey Superior Court Appellate Division (Docket No. A-3422-21) ("Court") on appeal by Respondents of the June 8, 2022 decision by the Commissioner of Banking and Insurance; and

WHEREAS, the Court in its published decision on September 26, 2023 (1) affirmed that the Commissioner properly found that Respondents' contracts did not specifically or clearly define or list the services to be rendered, and did not indicate the time the contracts were executed, in violation of N.J.S.A. 17:22B-13(c) and N.J.A.C. 11:1-37.13(b)(3)(ii) and (iii); (2) reversed the Commissioner's finding that the Respondents contracts violated N.J.A.C. 11:1-37.13(b)(5)(ii); and

(3) remanded the matter for a reassessment of the Kimmelman factors and recalculation of the penalties and costs; and

WHEREAS, the Commissioner has not yet determined the reassessment of any penalty or costs pursuant to the aforesaid decision of the Appellate Division for violation of N.J.S.A. 17:22B-13(c) and N.J.A.C. 11:1-37.13(b)(3)(ii) and (iii), as alleged in Count 1 of OTSC E17-82; and

WHEREAS, Respondents acknowledge and accept in accord with the Appellate Division decision that they did not specifically or clearly define or list the services to be rendered in their public adjuster contracts, and did not indicate the time of day the contracts were executed, in violation of N.J.S.A. 17:22B-13(c) and N.J.A.C. 11:1-37.13(b)(3)(ii) and (iii), as alleged in Count 1 of OTSC E17-82; and

WHEREAS, the allegations in Count 2 of OTSC E17-82 are withdrawn; and

WHEREAS, this matter is being resolved upon the consent of the parties;

NOW, THEREFORE, IT IS on this 14th day of April, 2025

ORDERED AND AGREED, that Respondents shall pay the sum of \$15,000.00 in civil penalties to the Department of Banking and Insurance for the violations listed in Count 1 of OTSC E17-82; and

IT IS FURTHER ORDERED AND AGREED, that any future violation of the Public Adjusters' Act shall be considered a subsequent violation; and

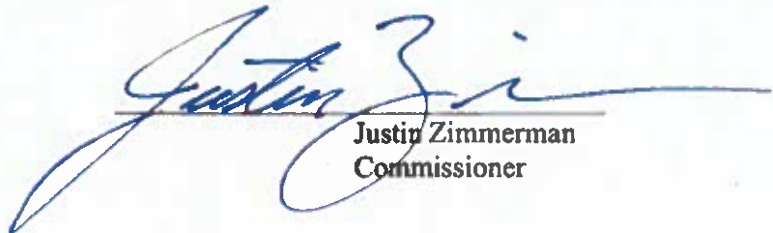
IT IS FURTHER ORDERED AND AGREED, that the \$15,000.00 total shall be paid by wire transfer, certified check, cashier's check or money order made payable to the "State of New Jersey" and the full amount shall be paid immediately upon execution of this Consent Order by Respondents; and

IT IS FURTHER ORDERED AND AGREED, that this signed Consent Order, together with the payment of \$15,000.00, shall be remitted to:

Nicholas Kant, Deputy Attorney General
State of New Jersey, Division of Law
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 117
Trenton, New Jersey 08625

IT IS FURTHER ORDERED AND AGREED, that Respondent shall cease and desist engaging in the conduct that gave rise to this Consent Order and from any future violation of the Public Adjusters' Act; and

IT IS FURTHER ORDERED AND AGREED, that the provisions of this Consent Order represent a final agency decision and constitute final resolution of the violations contained herein.



Justin Zimmerman
Commissioner

**Consented to as to
Form, Content and
Entry:**

Date: 2/3/25



Michael Patrick Diviney
Respondent

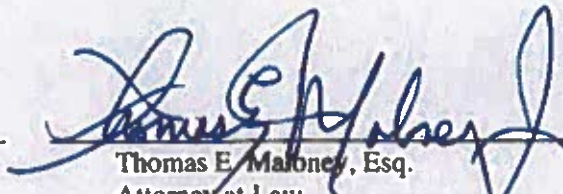
Property Damage Adjusters, Inc.

Date: 2/3/25



Michael Patrick Diviney
for Property Damage Adjusters, Inc.
Respondent


Date: _____



Thomas E. Maloney, Esq.
Attorney at Law
150 Morristown Road – Suite 200
Bernardsville, New Jersey 07924
Counsel for Respondents

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Petitioner

Date: 3/31/2025



Nicholas Kant
Deputy Attorney General