ORDER NO. E26-22 ~~E25~~

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 insurance producer licenses of Ariel Hessing Reference No. 9247474 and Walnut Advisory Corporation, Reference No. 8013038	**ORDER TO SHOW CAUSE**

TO: Ariel Hessing
203 School Street
Green Brook, New Jersey 08812

Walnut Advisory Corporation
c/o Ariel Hessing
203 School Street
Green Brook, New Jersey 08812

THIS MATTER, having been opened by the Commissioner of Banking and Insurance ("Commissioner"), State of New Jersey, upon information that Ariel Hessing ("Hessing") and Walnut Advisory Corporation ("WAC") (collectively, "Respondents"), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Hessing was licensed as a resident insurance producer by the State of New Jersey, pursuant to N.J.S.A. 17:22A-32(a), from June 8, 1992 until his license expired on June 30, 2020; and

WHEREAS, WAC was licensed as a resident insurance producer by the State of New Jersey, pursuant to N.J.S.A. 17:22A-32(a), from November 1, 1975 until its license expired on May 31, 2021; and

WHEREAS, Hessing and WAC voluntarily surrendered their licenses on July 13, 2020; and

WHEREAS, pursuant to N.J.S.A. 17:22A-32(b)(2), Hessing was the Designated Responsible Licensed Producer ("DRLP") and responsible for the conduct of WAC; and

WHEREAS, Respondents are subject the provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48 ("Producer Act"), the Producer Licensing regulations, N.J.A.C. 11:17-1.1 to -2.17, and the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 to 11:17D-2.8; 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 the Producer 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.A.C. 11:17C-2.1(a) and (b); an insurance producer shall hold all premium funds in a fiduciary capacity in a segregated account and not commingled with any other funds of the insurance producer and shall not be misappropriated or improperly converted to the insurance producer's own use; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.2(a) and (b), as applicable, an insurance producer shall remit all premium funds to the insurer or other insurance producers within five business days after receipt of the funds and all premiums due to an insured shall be paid or credited to the insured's account within five business days after receipt by the insurance producer; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.5(a), an insurance producer shall maintain accurate books and records reflecting all insurance-related transactions in which the insurance producer or his employees take part in accordance with the standards set forth in this chapter. These records may be maintained by either separate books of record or by one or more consolidated books of record. All books and records shall consist of sequentially numbered pages and shall be maintained in such a manner that they can be produced for examination at any time. Appropriate and required entries shall be made at least once every 30 days; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.5(a) and (b), an insurance producer shall maintain a register of all monies received, deposited, disbursed or withdrawn in connection

with an insurance transaction, including, but not limited to: premiums; service fees; placement fees; inspection fees; motorclub fees; premium taxes; transfers and disbursements from a trust account; and all transactions concerning, including the balance of, all interest bearing accounts. The minimum information required to be maintained in the register includes the following:

1. The date monies are received, deposited, disbursed or withdrawn;

2. The amount of money received, deposited, disbursed or withdrawn;

3. An itemized record of the allocation of the funds;

4. The name of the insured, insurance producer, insurer or other account to or from whom monies are disbursed or received pursuant to N.J.A.C. 11:17C-2.4(b);

5. The policy number or binder number;

6. The receipt number, when available; and

7. The method of payment, such as, cash, check, money order or draft, or credit card, charge card, debit card or direct account deduction pursuant to N.J.A.C. 11:1-24; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.3(i) an insurance producer's trust account balance shall at all times be at least equal to the amount deposited less lawful withdrawals, except where the sole reason for the deficiency is the failure by a bank to honor checks of insureds or prospective insureds accepted in good faith as payment of premiums. If the balance in the financial institution is less than the amount deposited less lawful withdrawals, the insurance producer shall be deemed to be in violation of this chapter and shall be subject to penalties as provided by N.J.A.C. 11:17C-1.3; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.3(b) an insurance producer's trust account shall be designated a "Trust Account" on the bank records and those words shall be displayed on the face of the checks on that account; 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.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. 17:22A-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, or may take any combination of actions for violating the Producer Act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45(c), any licensee violating the Producer Act and/or the Insurance Producer Standards of Conduct is subject to a penalty not exceeding $5,000.00 for the first offense and not exceeding $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

ALLEGATIONS COMMON TO ALL COUNTS

IT APPEARING that on or about March 11, 2019, Respondents' client "S.L." sent WAC a business check payable to WAC for $11,845.15 which was the premium amount for his professional liability policy with Catlin Insurance Company; and

IT FURTHER APPEARING that S.L.'s check was deposited on March 15, 2019 into Respondents' TD Bank account; and

IT FURTHER APPEARING that S.L. received a cancellation letter dated April 29, 2019 from Catlin Insurance Company for nonpayment that contained a cancellation date of May 10, 2019; and

IT FURTHER APPEARING that S.L. attempted to contact Respondents several times and eventually spoke to Hessing who told him that Catlin Insurance Company had made an error which Hessing would correct and Hessing would provide S.L. with confirmation that the policy was in full force and effect; and

IT FURTHER APPEARING that Respondents did not provide S.L. with confirmation that the issue had been resolved or that his insurance policy was in full force and effect; and

IT FURTHER APPEARING that Respondents used D & O Partners (D & O), a wholesale insurance broker to find coverage for S.L. Generally, wholesale insurance brokers such as D & O act as an intermediary between a retail insurance broker and an insurance company, primarily specializing in excess & surplus lines insurance. Wholesale insurance brokers assist retail brokers find coverage for complex or high-risk situations that standard insurers may not offer; and

IT FURTHER APPEARING that S.L. subsequently received correspondence from D & O indicating that the reason for the threatened cancellation was that the check Respondents sent D & O to pay S.L.'s insurance premium bounced and D & O could not get Respondents to send a replacement check; and

IT FURTHER APPEARING that D & O was forced to issue a check to Catlin Insurance Company to keep S.L.'s policy in full force and effect and advised S.L. that if they did not receive reimbursement from Respondents, then S.L. would be required to reimburse D & O

for the payment they made to Catlin Insurance Company on his behalf; resulting in S.L. having to make duplicate payment for the insurance policy; and

IT FURTHER APPEARING that when S.L. told Respondents that he would be reporting the incident to the Department, Respondents issued payment to D & O; and

IT FURTHER APPEARING that Respondents wired a payment for S.L.'s premium (minus the commission) in the amount of $10,723.45 to D & O on May 21, 2019; and

IT FURTHER APPEARING that Respondents allowed other agency checks to be distributed to other insurance carriers while Respondents did not have enough funds to cover S.L.'s premium and thereby incurred $210.00 in overdraft fees to Respondents' trust account; and

IT FURTHER APPEARING that Respondents' TD Bank trust account shows that premium funds were used to pay for licensing fees, telephone fees and cable billings, which should have been paid from Respondents' operating account, and thus the premium funds were misappropriated or improperly converted to Respondents' own use; and

IT FURTHER APPEARING that Respondents utilized numerous bank accounts to conduct their business; and

IT FURTHER APPEARING that the records for Respondents' bank accounts revealed multiple examples of funds deposited into the wrong account that were then used to pay other insureds' premiums or non-insurance related payments; and

IT FURTHER APPEARING that the records for Respondents' bank accounts revealed multiple fund transfers from Respondents' trust accounts into their operating account for payments to cover agency expenses, a New Jersey tax levy, transfers back to other trust accounts or payments to cover another insured's premium; and

IT FURTHER APPEARING that Respondents' bank accounts revealed several examples of negative balances within the trust accounts; and

IT FURTHER APPEARING that Respondents' bank account entitled "The Walnut Advisory Corporation FBO QBE" is a trust account but is not identified as such on bank records; and

COUNT 1

IT FURTHER APPEARING, that Respondents failed to remit S.L.'s premium funds within five business days, in violation of N.J.S.A. 17:22A-40(a)(2), (4), (8) and N.J.A.C. 11:17C-2.2(a); and

COUNT 2

IT FURTHER APPEARING, that Respondents caused, permitted or were otherwise responsible for operating a trust account with insufficient funds, in violation of N.J.S.A. 17:22A-40(a)(2), (4), and (8); and N.J.A.C. 11:17C-2.3(i); and

COUNT 3

IT FURTHER APPEARING that Respondents caused, permitted or were otherwise responsible for misappropriating or improperly converting premium funds to Respondents' own use, and failing to maintain a proper register of all monies received, disbursed or withdrawn in connection with an insurance transaction, in violation of N.J.S.A. 17:22A-40(a)(2), (4) and (8); and N.J.A.C. 11:17C-2.1(a) and (b); and N.J.A.C. 11:17C-2.2(a) and (b), and N.J.A.C. 11:17C-2.5(a) and (b); and

COUNT 4

IT FURTHER APPEARING that Respondents caused, permitted or were otherwise responsible for failing to maintain a designated trust account, in violation of N.J.S.A. 17:22A-40(a)(2), (4) and (8) and N.J.A.C. 11:17C-2.3(b); and

COUNT 5

IT FURTHER APPEARING, that under N.J.A.C. 11:1-12.2(a), Hessing is responsible for the conduct of WAC because he was the DRLP for WAC; and

NOW, THEREFORE, IT IS on this 20th day of January, 2026:

ORDERED, that Respondents appear and show cause why the New Jersey insurance producer licenses issued to Respondents should not be suspended or revoked by the Commissioner and why Respondents should not be fined up to $5,000.00 for the first offense and up to $10,000.00 for the second and each subsequent violation of the Producer Act and/or the Producer Standards of Conduct regulations, under N.J.S.A. 17:22A-40, N.J.S.A. 17:22A-45(c), and N.J.A.C. 11:17D-2.1(b)(2); and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c) Respondents appear and show cause why they should not be subject to additional penalties including restitution to their victim and reimbursement of the costs of investigation and prosecution by the Department of Banking and Insurance; 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 Respondents, and the Commissioner shall dispose of this matter in accordance with law. A hearing may be requested by mailing the request to Matthew Gervasio, 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, with a copy to Jessica Lugo, DAG, Banking and Insurance Section, R.J. Hughes Justice Complex, 25 Market Street, P.O. Box 117, Trenton, NJ 08625-0117. 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 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 the hearing.

Justin Zimmerman
Commissioner