

ORDER TO SHOW CAUSE NO. E13-135

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 license of) **ORDER TO SHOW CAUSE**
Thomas M. LaGuidice,)
Reference No. 1226682)

)

TO: Thomas M. LaGuidice
3 Rene Drive
Staten Island, NY 10306

THIS MATTER, having been opened by the Commissioner of Banking and Insurance ("Commissioner"), State of New Jersey, upon information that Thomas M. LaGuidice ("LaGuidice") while licensed as a non-resident individual insurance producer, may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, LaGuidice was licensed as an individual insurance producer, pursuant to N.J.S.A. 17:22A-32; and

WHEREAS, LaGuidice is subject to the provisions of the New Jersey Insurance Producer Licensing Act ("Producer Act"), N.J.S.A. 17:22A-26, et seq.; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(2), an insurance producer shall not violate any insurance law; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(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-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 the insurance business; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(15), an insurance producer shall not intentionally withhold material information or make a material misstatement in an application for a license; 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, 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 by the licensee; and all premium funds shall be segregated and not in any manner commingled with any other funds of the insurance producer; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.2, all premium funds shall be remitted to the insurer or other insurance producer, as applicable, within five business days after receipt of the funds; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.3, an insurance producer shall establish and maintain a trust account into which shall be deposited cash, checks and other instruments payable to the insurance producer: (1) when an insurance producer holds any premiums for more than five business days before remitting the premiums to an insurer or other insurance producer, pursuant to N.J.A.C. 11:17C-2.2(a)1 through 3; or (2) when an insurance producer deposits any collected premiums into a financial institution account or other investment or otherwise uses the premiums, even though the premiums are remitted within five business days; and

WHEREAS, pursuant to N.J.A.C. 11:17C-2.5, each insurance producer shall maintain accurate books and records reflecting all insurance-related transactions in which the insurance producer takes part, and shall maintain

a register of all monies received, deposited, disbursed or withdrawn in connection with an insurance transaction; 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 relative to the business of insurance within the time requested in said inquiry, or no later than 15 calendar days the inquiry was made or mailed in cases where no response time is given; and

ALLEGATIONS COMMON TO ALL COUNTS

IT APPEARING that LaGuidice was a non-resident insurance producer licensed in this State beginning in July 8, 2009 self-employed with Insurance Coverage 4-U; and

IT FURTHER APPEARING that on or about February 7, 2012, J.C., the owner of several businesses, namely, In Bocca Al Lupo Ltd., ChaCha's of Coney Island and Big Al's Hot Dog King, Ltd., requested that LaGuidice secure homeowner's insurance for his residence and commercial general liability coverage for his businesses; and

IT FURTHER APPEARING that, LaGuidice collected \$7,710.70 in insurance premiums from J.C. for said insurance coverage; and

IT FURTHER APPEARING that, LaGuidice collected insurance premiums for J.C.'s businesses, but did not obtain insurance coverage for said businesses; and

IT FURTHER APPEARING that, LaGuidice obtained homeowner's liability coverage for J.C.'s home located at 139 East 14th Street, Ship Bottom, New Jersey, through Quaker Special Risk/Lexington Insurance Company; and

IT FURTHER APPEARING that, LaGuidice failed to forward the funds paid by J.C. to the general agent and/or carrier necessary to keep the homeowners insurance policy in effect, and the policy was cancelled on July 12, 2012 for nonpayment of premium; and

IT FURTHER APPEARING that, J.C. filed a claim for damages resulting from superstorm Sandy, but the claim was denied because the homeowner's insurance policy had been cancelled; and

COUNT 1

IT FURTHER APPEARING that, LaGuidice collected insurance premiums from J.C. for homeowners and commercial insurance, in the amount of \$7,710.70.

IT FURTHER APPEARING that, LaGuidice collected insurance premiums from J.C. in the total amount of \$7,710.70, and paid to Quaker Special Risk only \$1,033.95 towards the earned premium of the homeowners insurance policy, and misappropriated or converted the balance of the funds received for his own use, in violation of N.J.S.A.

17:22A-40a(2), (4), (5), (8), and (16) and N.J.A.C. 11:17C-2.1; and

IT FURTHER APPEARING that, LaGuidice failed to forward the balance of the funds collected from J.C. to the general agent and/or carrier, nor return any such funds to the insured in violation of N.J.S.A. 17:22A-40a(2), (4), (8), and (16) and N.J.A.C. 11:17C-2.2(a); and

COUNT 2

IT FURTHER APPEARING that, LaGuidice collected insurance premiums from J.C., totaling \$7,710.70, yet failed to deposit said funds into a trust account, in violation of N.J.S.A. 17:22A-40a(2), (4), (8), and (16) and N.J.A.C. 11:17C-2.3(a);and

COUNT 3

IT FURTHER APPEARING that, LaGuidice failed to maintain accurate books and records reflecting all insurance-related transactions, and failed to maintain a register containing the minimum required information regarding all monies received, deposited, disbursed or withdrawn in connection with insurance transactions, in violation of N.J.S.A. 17:22A-40a(2) and (8) and N.J.A.C. 11:17C-2.5; and

COUNT 4

IT FURTHER APPEARING that, LaGuidice failed to provide the information requested by the Department's multiple inquiries in connection with the investigation of J.C.'s complaint, including a subpoena dated August 8, 2013, in violation of N.J.S.A. 17:22A-40a(2) and N.J.A.C. 11:17A-4.8; and

COUNT 5

IT FURTHER APPEARING that, in 1998, LaGuidice was fined \$5,500.00 in the State of New York for misrepresenting the terms, benefits and conditions of insurance policies, and he failed to disclose this action on his New Jersey non-resident insurance producer license application dated July 8, 2009, in violation of N.J.S.A. 17:22A-40a(2), (15) and (16); and

NOW, THEREFORE, IT IS on this 20th day of *December*, 2013

ORDERED, that pursuant to the provisions of N.J.S.A. 17:22A-40a, Respondent shall appear and show cause why his insurance producer license shall not be revoked by the Commissioner; and

IT IS FURTHER ORDERED that Respondent shall appear and show cause why the Commissioner should not assess fines up to \$5,000.00 for the first violation and not exceeding \$10,000.00 for each subsequent violation, pursuant to the

provisions of N.J.S.A. 17:22A-45c, due to his failure to comply with the Producer Act; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 17:22A-45c, Respondent shall appear and show cause why he should not be subject to additional penalties, including restitution and reimbursement of the costs of investigation and prosecution by the Department of Banking and Insurance; 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 subpoena and subpoena duces tecum 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 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, New Jersey Department of Banking and Insurance, P.O. Box 329, Trenton, N.J. 08625 or by faxing

the request to the Department at (609) 292-5337. The request shall contain:

- (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 Respondents have no specific knowledge regarding a fact alleged in this 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

Acting Director of Insurance