

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 Arbor Title Agents, Inc., Ref. No. 1011398 and Mark C. Donohue, Jr., Ref. No. 0195273.)
) FINAL ORDER
)
)
)
)
)

TO: Arbor Title Agents, Inc.
c/o Mark C. Donohue, Jr.
744 Purdue Avenue
Wenonah, New Jersey 08090

Mark C. Donohue, Jr.
744 Purdue Avenue
Wenonah, New Jersey 08090

This matter, having been opened to the Commissioner of Banking and Insurance ("Commissioner"), State of New Jersey, upon information that Arbor Title Agents, Inc. ("Arbor") and Mark C. Donohue, Jr. ("Donohue"), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Arbor was previously licensed as a resident insurance producer pursuant to N.J.S.A. 17:22A-32 before its license expired on May 31, 2011; and

WHEREAS, Donohue was previously licensed as a resident insurance producer pursuant to N.J.S.A. 17:22A-32 before his license expired on November 30, 2011; and

WHEREAS, pursuant to N.J.S.A. 17:22A-32b(2), Donohue is the Designated Responsible Licensed Producer ("DRLP"), sole owner of Arbor and responsible for the conduct of Arbor; and

WHEREAS, Donohue and Arbor are subject to the provisions of the New Jersey Insurance Producer Licensing Act ("Producer Act"), N.J.S.A. 17:22A-26, et seq., the Title Insurance Act of 1974 ("Title Act"), N.J.S.A. 17:46B-1 et seq., the regulations governing Producer Licensing, N.J.A.C. 11:17-1 et seq. and the regulations governing Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 et seq. and N.J.A.C. 11:17C-1.1 et seq.; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(2), an insurance producer shall not violate any insurance laws, regulations, subpoenas or orders of the Commissioner or of another state's insurance regulator; 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(8), an

insurance producer shall not use fraudulent, coercive or dishonest business practices, or demonstrate incompetence, untrustworthiness or financial irresponsibility in the conduct of insurance business; 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.S.A. 17:22A-45a, the Commissioner shall have the power to conduct investigations, to administer oaths, to interrogate licensees and others, and to issue subpoenas to any licensee or any other person in connection with any investigation; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40d, the Commissioner shall retain the authority to enforce the provisions of, and impose any penalty or remedy authorized by, the Producer Act against any person who is under investigation for or charged with a violation of the Producer Act 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. 17:46B-10.1a, every title insurance producer licensed pursuant to the Producer Act shall maintain a separate record of all receipts and disbursements as a depository for funds representing closing and 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 or company's own funds or with funds held by a producer or company in any other capacity; and

WHEREAS, pursuant to N.J.A.C. 11:17-2.14(c), allowing a license to expire shall not void or terminate any disciplinary proceedings against the licensee, not prevent imposition of any penalty, ordered restitution or costs; 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, or no less 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.A.C. 11:17C-2.1(a), an insurance producer shall hold all premium funds in a fiduciary capacity and shall not misappropriate, improperly convert to the insurance producer's own use or illegally withhold premium funds; and

WHEREAS, the Commissioner issued Order to Show Cause

No. E13-15 on February 19, 2013 (hereinafter, the "OTSC"), alleging violations of New Jersey insurance laws by Respondents Arbor and Donohue as set forth in the following Counts:

ALLEGATIONS COMMON TO ALL COUNTS

IT APPEARING that on May 12, 2006, Respondents Arbor and Donohue conducted a settlement and real estate closing as title agent on the sale of 29 Holly Oak Drive, Voorhees, New Jersey, for sellers Jaime Kaigh and Karen Nicholson (Kaigh and Nicholson collectively referred to as "Sellers") and buyer Suzanne Blanco ("Buyer"); and

IT FURTHER APPEARING that according to the U.S. Department of Housing and Urban Department ("HUD") Settlement Statement, \$70,000.00 of the proceeds of the sale were to be held in escrow by Respondents Arbor and Donohue pending resolution of two outstanding Federal Internal Revenue Service ("IRS") tax liens against Sellers for the tax years 1997 and 1998; and

IT FURTHER APPEARING that, in August 2009, Don Devlin, Sellers' accountant, notified Arbor and Donohue that the two IRS tax liens had expired and demanded the \$70,000.00 in escrow funds be returned to Sellers; and

IT FURTHER APPEARING that Arbor and Donohue never

remitted the funds to the Sellers or accounted for the \$70,000.00 held in escrow for the Sellers; and

COUNT 1

IT FURTHER APPEARING that Respondents Arbor and Donohue commingled closing funds received from sellers that were meant to be placed in an escrow account for future payments and failed to hold escrow funds in a fiduciary capacity, in violation of N.J.S.A. 17:46B-10.1a, N.J.S.A. 17:22A-40a(2), (4), (8) and (16), N.J.A.C. 11:17A-4.10 and N.J.A.C. 11:17C-2.1(a); and

COUNT 2

IT FURTHER APPEARING that Respondents Arbor and Donohue improperly withheld, misappropriated and converted escrow funds belonging to Sellers, received in the course of doing insurance business, which constitutes fraudulent and dishonest practices and demonstrates incompetence, untrustworthiness and financial irresponsibility in the conduct of insurance business, in violation of N.J.S.A. 17:46B-10.1a, N.J.S.A. 17:22A-40a(2), (4), (8) and (16) and N.J.A.C. 11:17C-2.1(a); and

COUNT 3

IT FURTHER APPEARING that on February 28, 2012, pursuant to N.J.S.A. 17:22A-45a, the Department sent a letter by certified mail to Donohue requesting that Donohue provide a written response to the Department regarding the allegations contained in this Order to Show Cause; and

IT FURTHER APPEARING that on March 9, 2012, Donohue received this letter from the Department and signed the Return Receipt, which was then returned to the Department; and

IT FURTHER APPEARING that Donohue failed to respond to the Department's inquiry in writing, or by any other method, in violation of N.J.S.A. 17:22A-40a(2) and (8) and N.J.A.C. 11:17A-4.8.

IT FURTHER APPEARING that as set forth in the certification of service of Kristina Cretella, Deputy Attorney General, attached hereto 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 No. E13-15, which were duly served by certified and regular mail to the addresses of Respondents listed in this Final Order in accordance with N.J.A.C. 11:17D-2.1(a)3; and

IT FURTHER APPEARING that, although due notice of the charges provided an opportunity to oppose the allegations, Respondents failed to provide a written response to the charges contained in Order to Show Cause No. E13-15 within 20 days as provided by N.J.A.C. 11:17D-2.1(d), and therefore Respondents have 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);

NOW, THEREFORE, IT IS on this 12TH day of November, 2014:

ORDERED that the charges contained in Order to Show Cause No. E13-15 are deemed admitted by Respondents pursuant to

N.J.A.C. 11:17D-2.1(b); 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 insurance producer licenses of Respondents Arbor and Donohue are hereby REVOKED effective upon the execution of this Final Order by the Commissioner; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 17:22A-45c, Respondents Arbor and Donohue shall be jointly and severally responsible for the payment of civil penalties totaling \$25,000.00 to the Commissioner for the violations contained in Order to Show Cause No. E13-15, which aggregate amount has been determined as follows:

- a. Count 1: \$5,000.00 for commingling closing funds recovered from sellers that were meant to be placed in an escrow account; and
- b. Count 2: \$10,000.00 for improperly withholding, misappropriating, and converting escrow funds belonging to sellers; and
- c. Count 3: \$10,000.00 for failure to respond to the Department's inquiry; and

IT IS FURTHER ORDERED that Respondents shall pay the above fines in full by remitting payment to the Commissioner of Banking and Insurance, State of New Jersey, 20 West State Street, 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 (10) days from the date of service of this Order; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 11:1-32.4(b)20, Respondents shall reimburse the Department of Banking and Insurance for the costs associated with the investigation of this matter, as evidenced by the Certification of Investigator Linda Gleghorn, attached hereto as Exhibit B, totaling \$287.50, by means of a certified check, cashier's check or money order made payable to the State of New Jersey, General Treasury, which shall be remitted to the Commissioner of Banking and Insurance, State of New Jersey, 20 West State Street, P.O. Box 329, Trenton, New Jersey 08625, Attention: Virgil Downtin, Chief of Investigations, within ten (10) days from the date of service of this; and

IT IS FURTHER ORDERED that Respondents Arbor and Donohue, jointly and severally, shall pay restitution to Sellers in the amount of \$70,000.00; and

IT IS FURTHER ORDERED that in the event full payment of the fines and costs are not made, the Commissioner may exercise any and all remedies available by law, including but not limited to recovery of any unpaid penalties, in accordance with The

Penalty Enforcement Law, N.J.S.A. 2A:58-10 et seq.; and

IT IS FURTHER ORDERED that the fines in this Final Order are 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 are 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. E13-15.



Peter Hartt
Acting Director of Insurance

E

X

H

I

B

I

T

A

of the insurance laws of the State of New Jersey.

3. Under cover letter dated February 20, 2013, our office served Respondents with Order to Show Cause No. E13-15 by certified mail, return receipt requested, and regular mail to Respondent Donohue at 744 Purdue Avenue, Wenonah, New Jersey, 08090.

4. Respondent Donohue was successfully served at 744 Purdue Avenue, Wenonah, New Jersey 08090 as evidenced by the fact that the regular mail was not returned by U.S. Postal Service and the certified mailing was accepted by Respondent Donohue.

5. Under cover letter dated February 20, 2013, our office served Respondents with Order to Show Cause No. E13-15 by certified mail, return receipt requested, and regular mail to Respondent Arbor c/o Mark C. Donohue, Jr. at 744 Perdue Avenue, Wenonah, New Jersey, 08090.


6. Respondent Arbor was successfully served at 744 Perdue Avenue, Wenonah, New Jersey, 08090 evidenced by the fact that the regular mail was not returned by U.S. Postal Service and the certified mailing was accepted by Respondent Donohue, Designated Responsible Licensed Producer and sole owner of Arbor.

7. The successful service of the Order to Show Cause to Respondents Donohue and Arbor provided Respondents with an opportunity to contest the charges of Order to Show Cause No. E13-15 at a hearing, and provided that Respondents must file with the

Commissioner an Answer to the charges of the Order to Show Cause, including a Request for a Hearing, within twenty (20) days of service of the Order to Show Cause upon Respondents, as provided by N.J.A.C. 11:17D-2.1(d).

8. To date, Respondents Donohue and Arbor have failed to provide any written response to the charges contained in Order to Show Cause No. E13-15.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Kristina Cretella
Deputy Attorney General

Dated: November 10, 2014

E

X

H

I

B

I

T

B

FINAL ORDER NO.
EXHIBIT B

Proceeding by the Commissioner of)
Banking and Insurance, State of New)
Jersey, to fine, suspend and/or revoke)
the insurance producer licenses of)
Arbor Title Agents, Inc., Ref. No.)
1011398 and Mark C. Donohue, Jr.,)
Ref. No. 0195273)

CERTIFICATION OF COSTS
BY INVESTIGATOR
LINDA GLEGHORN

I, Linda Gleghorn, of full age, do of my own personal knowledge make the following statements by way of certification in lieu of affidavit pursuant to R. 1:4-4(b):

1. I am an investigator with the New Jersey Department of Banking and Insurance, Division of Enforcement and Consumer Protection ("Department").

2. This certification is submitted in support of the Department's application for reimbursement of its costs of investigation and prosecution, in accordance with N.J.S.A. 17:22A-45(c).

3. On July 15, 2010, I was assigned responsibility for conducting an investigation to determine whether Arbor Title Agents, Inc. and Mark C. Donohue, Jr., may have violated certain provisions of the New Jersey Producer Licensing Act of 2001, N.J.S.A. 17:22A-26, et seq., and related insurance regulations.

4. To determine the amount of time that I spent in the investigation and prosecution of this matter, I reviewed my

5. As this schedule reflects, the investigative efforts expended by the Department of Insurance concerning this matter total #5 hours and #25 minutes. Pursuant to N.J.A.C. 11:1-32.4(b)(20), costs to the Department for the investigation and prosecution for violations of the New Jersey Insurance Producer Licensing Act, N.J.S.A. 17:22A-40, are reimbursable at the rate of \$50.00 per hour, rounded to the nearest quarter hour.

6. I therefore request that the Department's costs of investigation and prosecution be reimbursed in the amount of \$287.50.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.



Linda Gleghorn

Dated: July 22, 2014