

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of	)	ORDER
Banking and Insurance, State of New Jersey,	)	TO SHOW CAUSE
to fine, suspend and/or revoke the public	)	
adjuster licenses of David A. Mickens,	)	
Reference No. 1439997, and American	)	
Claims Agency, LLC, Reference No.	)	
1440017.	)	

TO: David A. Mickens  
7625 Ruby Street  
Philadelphia, PA 19150

American Claims Agency, LLC  
c/o David A. Mickens  
7625 Ruby Street  
Philadelphia, PA 19150

This matter, having been opened by the Commissioner of Banking and Insurance, State of New Jersey ("Commissioner"), upon information that David A. Mickens ("Mickens") and American Claims Agency, LLC ("American Claims") (collectively, "Respondents") may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Mickens was licensed in the State of New Jersey as a non-resident public adjuster pursuant to N.J.S.A. 17:22B-3, until his license expired on or about March 31, 2016; and

WHEREAS, American Claims was licensed in the State of New Jersey as a non-resident business entity public adjuster pursuant to N.J.S.A. 17:22B-3, until its license expired on or about May 31, 2014; and

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 Public Adjusters' Licensing Regulations, N.J.A.C. 11:1-37.1 to -37.19; and

WHEREAS, pursuant to N.J.S.A. 17:22B-13(c), a public adjuster shall not have any right to compensation from any insured for or on account of services rendered unless the right to compensation is based upon a written memorandum, signed by the party to be charged and by the adjuster, that specifies and clearly defines the services to be rendered and the amount or extent of the compensation on a form and with such language as the commissioner may prescribe; and

WHEREAS, pursuant to N.J.S.A. 17:22B-13(f), any moneys received, accepted and held in escrow by a public adjuster towards the settlement of a claim, together with interest accumulated thereon, shall be the property of the insured until disbursement thereof pursuant to a written memorandum, signed by the insured and by the adjuster, specifying or clearly defining the services rendered and the amount of any compensation to be paid therefrom; and

WHEREAS, pursuant to N.J.S.A. 17:22B-14(a), the Commissioner may deny, suspend, revoke, or refuse to renew a public adjuster's license if, after notice and opportunity for a hearing, the Commissioner determines that the licensee has, among other things: (3) committed a fraudulent or dishonest act or (4) demonstrated a lack of integrity, bad faith, dishonesty, financial irresponsibility, or untrustworthiness to act as a public adjuster; and

WHEREAS, pursuant to N.J.A.C 11:1-37.13(b)(3), the written memorandum or contract between a licensed public adjuster and an insured shall contain the following: (i) the signatures of the insured and the public adjuster; (ii) a list of services to be rendered and the maximum fees to be charged, which fees shall be reasonably related to services rendered; and (iii) the time and date of execution of the contract (day, month, year) 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. 11:1-37.14(a), Commissioner may deny, suspend, revoke, or refuse to renew a public adjuster's license based on any violation of the Public Adjusters' Act or the regulations promulgated thereunder, or for the commission or omission of any act by a public adjuster which demonstrates that the applicant or licensee is not competent or trustworthy to act as a public adjuster, or where the person has, among other things: (3) committed a fraudulent or dishonest act and (4) demonstrated the applicant's or licensee's lack of integrity, incompetency, bad faith, dishonesty, financial irresponsibility, or untrustworthiness to act as a public adjuster; and

WHEREAS, pursuant to N.J.A.C. 11:1-37.14(a)(11), a public adjuster shall not refuse or fail to cooperate with an investigation by the Commissioner; and

WHEREAS, pursuant to N.J.S.A. 17:22B-17, violations of the Public Adjusters' Act subject the violator to a civil and administrative penalty of up to \$2,500.00 for the first offense and up to \$5,000.00 for each subsequent offense and, additionally, the Commissioner may order restitution of moneys owed any person and reimbursement of costs of the investigation and prosecution; and

WHEREAS, pursuant to N.J.S.A. 17:33A-4(a)(1), it is a violation of the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 to -30 ("Fraud Act"), for any person to present

or cause to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim; and

WHEREAS, pursuant to N.J.S.A. 17:33A-5(b), violations of the Fraud Act subject the violator to civil penalties not to exceed \$5,000.00 for the first offense, not to exceed \$10,000.00 for the second offense, and not to exceed \$15,000.00 for each subsequent offense, and the Court shall also award court costs and reasonable attorney fees; and

WHEREAS, pursuant to N.J.S.A. 17:33A-5.1, in addition to any other penalty, fine or charge imposed pursuant to law, any person who is found in any legal proceeding to have committed insurance fraud shall be subject to a surcharge in the amount of \$1,000; and

**ALLEGATIONS COMMON TO ALL COUNTS**

IT APPEARING, that at all relevant times, Mickens was the sole owner, officer and designated sublicensee of American Claims; and

IT FURTHER APPEARING, that at all relevant times, Adept Cleaning & Restoration, LLC (“Adept Cleaning”) was a separate business enterprise also owned and operated by Mickens that did not perform any public adjuster services, but rather did emergency repairs, restoration, reconstruction and cleaning services for commercial and residential properties; and

IT FURTHER APPEARING, that on or about September 10, 2013, residential property owned and insured by D.M sustained damages from a severe storm and Adept Cleaning was then retained by D.M. to fix and repair said property damage; and

IT FURTHER APPEARING, that on or about October 16, 2013, D.M. executed a written “Letter of Representation” retaining Respondents’ services as public adjusters to negotiate and

settle the loss claim filed by D.M. under her homeowners' insurance policy with Mutual Mid-Atlantic Insurance Company ("Mutual Insurance") regarding the property damage sustained on September 10, 2013; and

**COUNT ONE**

IT FURTHER APPEARING, that the "Letter of Representation" prepared by Respondents and executed by D.M. did not satisfy the requirements for a legally adequate and sufficient public adjuster's contract, in that said document was not countersigned by the Respondents and failed to contain any specific or clear provisions setting forth the scope of services, maximum chargeable fees, distribution of settlement proceeds or the terms and conditions of cancellation, in violation of N.J.S.A. 17:22B-13(c) and N.J.A.C. 11:1-37.13(b)(3) and (b)(5); and

**COUNT TWO**

IT FURTHER APPEARING, that on or about October 26, 2013, Respondents prepared and submitted to Mutual Insurance an invoice from Adept Cleaning that was false and fraudulent, in that said invoice was a claim for payment of \$4,175.80 for services and repairs purportedly completed on D.M.'s property that Adept Cleaning never performed, in violation of N.J.S.A. 17:22B-14(a)(3) and (4), N.J.A.C. 11:1-37.14(a)(3) and (4), and N.J.S.A. 17:33A-4(a)(1)

**COUNT THREE**

IT FURTHER APPEARING, that on or about November 23, 2013, Respondents received from Mutual Insurance a check in the amount of \$4,175.80 made jointly payable to Adept Cleaning, D.M. and R.M (D.M's husband), which Respondents improperly and fraudulently deposited into their own bank account and thereafter retained the entire proceeds thereof, without

the knowledge, approval or consent of the insureds and without acquiring the insureds' signature endorsements thereon, in violation of N.J.S.A. 17:22B-13(c) and (f), N.J.S.A. 17:22B-14(a)(3) and (4), and N.J.A.C. 11:1-37.14(a)(3) and (4); and

**COUNT FOUR**

IT FURTHER APPEARING, that Respondents failed and refused to respond to multiple written requests from the New Jersey Department of Banking and Insurance to provide information and documents in connection with its investigation of Respondents' business dealings with D.M. and Adept Cleaning, in violation of N.J.S.A. 17:22B-14(a)(1) and N.J.A.C. 11:1-37.14(a)(11); and

**NOW, THEREFORE, IT IS** on this 21 day of September \_\_\_\_\_, 2020,

ORDERED, that Respondents appear and show cause why their New Jersey public adjuster licenses should not be suspended or revoked pursuant to N.J.S.A. 17:22B-14; and

IT IS FURTHER ORDERED, that Respondents appear and show cause why the Commissioner should not assess a civil penalty of up to \$2,500.00 for the first violation and up to \$5,000.00 for each subsequent violation of the Public Adjuster's Act and the Public Adjuster Licensing Regulations, and order Respondent(s) to pay restitution of moneys owed to any person, pursuant to N.J.S.A. 17:22B-17 and N.J.A.C. 11:1-37.14(b); and

IT IS FURTHER ORDERED, that Respondents appear and show cause why the Commissioner should not assess a penalty of not more than \$5,000 for the first violation, \$10,000 for the second violation, and \$15,000 for each subsequent violation of the Fraud Act and order restitution, pursuant to N.J.S.A. 17:33A-5(c); and

IT IS FURTHER ORDERED, that Respondents appear and show cause why, in addition to any other penalty, the Commissioner should not assess costs of the investigation and

prosecution, including attorneys' fees, pursuant to N.J.S.A. 17:22B-17 and N.J.S.A. 17:33A-5(c);  
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 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 Virgil Downtin, Chief of Investigations, 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. A copy of the request for a hearing shall also be sent to Dakar R. Ross, Deputy Attorney General, Department of Banking and Insurance, P.O. Box 117, Trenton, New Jersey 08625. The request from each respondent 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 a hearing.

*Marlene Caride*

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**Marlene Caride  
Commissioner**