

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 Brian J. Spak, Reference No. 9952641)
and the insurance producer license of John R.)
Najarian, Reference No. 0296772.)

ORDER TO SHOW CAUSE

TO: Brian J. Spak
14 Jean Drive
Hamilton Square, New Jersey 08690

John R. Najarian
52 Stony Ridge Drive
Hillsdale, New Jersey 07642

This matter, having been opened by the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon information that Brian J. Spak (“Spak”) and John R. Najarian (“Najarian”)(collectively, “Respondents”) may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, Spak was licensed as a resident insurance producer, pursuant to N.J.S.A. 17:22A-32a, on March 23, 2013, until said license expired on March 31, 2015; and

WHEREAS, Najarian was licensed as a resident insurance producer, pursuant to N.J.S.A. 17:22A-32a, on February 23, 2012, until said license expired on March 3, 2015; and

WHEREAS, Respondents are subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 to -48 (“Producer Act”); and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(1), an insurance producer shall not provide incorrect, misleading, incomplete or materially untrue information in the license application; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(2), an insurance producer shall not violate any insurance laws, or violate any 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)(3), an insurance producer shall not obtain or attempt to obtain a license through misrepresentation or fraud; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40(a)(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-40(a)(16), an insurance producer shall not commit any fraud; and

WHEREAS, pursuant to N.J.S.A. 17:22A-47(a), an insurance producer shall report to the Commissioner any administrative action taken against the insurance producer in another jurisdiction or by another governmental agency in this State within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40d, the Commissioner shall retain authority to enforce the provisions of and to impose any penalty or remedy authorized by this 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 this 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-40a, the Commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license for violating the Producer Act; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45c, any person violating the Producer Act is subject to a penalty not exceeding \$5,000.00 for the first offense and not exceeding \$10,000.00 for each subsequent offense; moreover, the Commissioner may order restitution of moneys owed any person and reimbursement of costs of the investigation and prosecution; and

FACTS COMMONS TO ALL COUNTS

IT APPEARING, that at all relevant times, Respondents were licensed as resident insurance producers; and

IT FURTHER APPEARING, that on or about August 7, 2012, the New Jersey Bureau of Securities ("NJBOS") filed a civil action, by way of Verified Complaint ("Complaint"), in Superior Court, Chancery Division, Hudson County, against Respondents and their co-conspirators alleging multiple violations of the New Jersey Uniform Securities Law (1997)("NJUSL"), N.J.S.A. 49:3-47 to -83; and

IT FURTHER APPEARING, that as alleged in NJBOS's Complaint, Respondents and their co-conspirators engaged in numerous illegal and fraudulent acts in connection with the offer and sale of securities and thereby defrauded investors of more than \$7.2 million and were unjustly and unlawfully enriched in excess of \$4 million; and

COUNT ONE

(As to John Najarian only)

IT FURTHER APPEARING, that on or about December 30, 2013, a Consent Order and Final Judgment (“Final Judgment”) was entered by the Superior Court, Chancery Division, Hudson County, in favor of the NJBOS and against Najarian and certain co-conspirators; and

IT FURTHER APPEARING, that as set forth in said Final Judgment, Najarian admitted that he had, in fact, violated the NJUSL in connection with the offer and sale of securities by engaging in multiple illegal and unlawful acts, which included but were not limited to: (1) failing to register as a securities “agent”; (2) offering and selling unregistered securities; (3) employing a device, scheme or artifice to defraud investors; (4) engaging in an act, practice or course of business which operated as a fraud or deceit upon investors; and (5) knowingly making material misrepresentations, misleading statements and material omissions in the offer and sale of securities; and

IT FURTHER APPEARING, that as set forth in said Final Judgment, a civil money judgment was entered against Najarian in the total sum of \$749,550, which constituted a \$25,000 civil penalty pursuant to N.J.S.A. 49:3-70.1 and the restitution/disgorgement of \$724,550 pursuant to N.J.S.A. 49:3-69(a)(2); and

IT FURTHER APPEARING, that based upon the admissions set forth in the Final Judgment and the adjudication by the Superior Court of New Jersey, Najarian engaged in fraudulent and dishonest practices, and demonstrated untrustworthiness in the conduct of his securities business, and therefore committed fraudulent acts during the time period he was licensed as an insurance producer, in violation of N.J.S.A. 17:22A-40(a)(2) and (16); and

COUNT TWO

(As to John Najarian only)

IT FURTHER APPEARING, that in or about March 2014, shortly after executing the Consent Order with the NJBOS, Najarian applied to renew his license as an insurance producer; and

IT FURTHER APPEARING, that in completing the license renewal application, Najarian falsely answered “NO” to the following question: “Have you been named or involved in an administrative proceeding including a FINRA sanction or proceeding regarding any professional or occupational license or registration, which has not been previously reported to the insurance department?”; and

IT FURTHER APPEARING, that in completing the license renewal application, Najarian intentionally failed to disclose any information regarding his involvement in the civil litigation with the NJBOS, in violation of N.J.S.A. 17:22A-40(a)(1), (3), and (15); and

COUNT THREE

(As to John Najarian only)

IT FURTHER APPEARING, that in December 2013, the litigation commenced by the NJBOS against Najarian had been completed and Najarian failed to report to the Commissioner the civil action taken by the NJBOS within 30 days of the final disposition of the matter, in violation of N.J.S.A. 17:22A-47(a); and

COUNT FOUR

(As to Brian Spak only)

IT FURTHER APPEARING, that in or about March 2013, while the litigation with the NJBOS was still pending and active, Spak applied to renew his license as an insurance producer; and

IT FURTHER APPEARING, that in completing the license renewal application, Spak falsely answered “NO” to the following question: “Are you currently a party to...any lawsuit, arbitrations or mediation proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty?”; and

IT FURTHER APPEARING, that in completing the license renewal application, Spak intentionally failed to disclose any information regarding the pending civil litigation with the NJBOS, in violation of N.J.S.A. 17:22A-40(a)(1), (3), and (15); and

COUNT FIVE

(As to Brian Spak only)

IT FURTHER APPEARING, that on or about May 9, 2014, a Final Judgment by Default (“Default Judgment”) was entered by Superior Court, Chancery Division, Hudson County, in favor of the NJBOS and against Spak and certain co-conspirators; and

IT FURTHER APPEARING, that as set forth in said Default Judgment, the Court adjudicated and determined that Spak had, in fact, committed 730 separate violations of the NJUSL in connection with 146 securities transactions; and

IT FURTHER APPEARING, that as set forth in said Default Judgment, that Court also adjudicated and determined, more specifically, that Spak had, in fact, violated the NJUSL in connection with the offer and sale of securities by engaging in multiple illegal and unlawful acts, which included but were not limited to: (1) failing to register as a securities “agent”; (2) offering and selling unregistered securities; (3) employing a device, scheme or artifice to defraud investors; (4) engaging in misconduct in a highly unreasonable and reckless manner that operated as a fraud upon investors; and (5) knowingly making material misrepresentations, misleading statements and material omissions in the offer and sale of securities; and

IT FURTHER APPEARING, that as set forth in said Default Judgment, a civil money judgment was entered against Spak in the total sum of \$14,618,944, which constituted a \$7 million civil penalty pursuant to N.J.S.A. 49:3-70.1 and the restitution/d disgorgement of \$7,618,944 pursuant to N.J.S.A. 49:3-69(a)(2); and

IT FURTHER APPEARING, that based upon the determinations and adjudication made by the Superior Court of New Jersey as set forth in the Default Judgment, Spak engaged in fraudulent and dishonest practices, and demonstrated untrustworthiness in the conduct of his securities business, and therefore committed fraudulent acts during the time period he was licensed as an insurance producer, in violation of N.J.S.A. 17:22A-40(a)(2) and (16); and

COUNT SIX

(As to Brian Spak only)

IT FURTHER APPEARING, that in May 2014, the litigation commenced by the NJBOS against Spak had been completed and Spak failed to report to the commissioner the civil action taken by the NJBOS within 30 days of the final disposition of the matter, in violation of N.J.S.A. 17:22A-47(a); and

NOW, THEREFORE, IT IS on this 4th day of January, 2021,

ORDERED, that Respondents appear and show cause why their New Jersey insurance producer license should not be suspended or revoked pursuant to N.J.S.A. 17:22A-40(a); and

IT IS FURTHER ORDERED, that Respondents appear and show cause why the Commissioner should not assess a civil penalty of up to \$5,000.00 for the first violation and \$10,000.00 for each subsequent violation of the Producer Act and order them to pay restitution of moneys owed to any person, pursuant to the provisions of N.J.S.A. 17:22A-45(c); and

IT IS FURTHER ORDERED, that Respondents appear and show cause why they should not be required to reimburse the Department for the cost of the investigation and prosecution, including attorneys' fees, as authorized pursuant to N.J.S.A. 17:22A-45(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 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 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 Deputy Attorney General Dakar Ross at Division of Law, Banking and Insurance Section, 25 Market Street, P.O. Box 117, Trenton, NJ 08625-0117, or by faxing the hearing request to (609) 777-3607. The request shall contain the following:

- (a) Respondents' 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 Respondents have 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.



Marlene Caride
Commissioner