

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.

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

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

WHEREAS, the Commissioner issued Order to Show Cause No. E21-02 on January 4, 2021, alleging violations of the Producer Act by Respondent Spak as set forth below:

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 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/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 ligation 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

IT FURTHER APPEARING, that as set forth in the Certification of Dakar Ross (attached as Exhibit A), on March 23, 2022, a Final Order (“Final Order E22-18”) was entered by the Commissioner against John R. Najarian which determined that Najarian failed to provide written responses to the charges contained in Order to Show Cause E21-02, waived his rights to a hearing, and therefore the charges were deemed admitted. Accordingly, the Commissioner revoked Najarian’s insurance producer license, assessed a civil penalty in the total amount of twenty five thousand dollars (\$25,000.00) and awarded reimbursement of the costs of investigation totaling \$512.50; and

IT FURTHER APPEARING, that as set forth in the Certification of Dakar Ross (attached hereto as Exhibit A), Spak was given notice of the aforesaid charges and an opportunity to contest the charges at a hearing pursuant to Order to Show Cause E21-02, which was duly served on Spak

by certified mail, RRR, and regular mail sent to the address listed on this Final Order in accordance with N.J.A.C. 11:17D-2.1(a)(3); and

IT FURTHER APPEARING, that Respondent Spak initially filed an Answer to the OTSC and requested a hearing, and thereafter, on February 27, 2023, Respondent voluntarily withdrew his answer and decided not to contest the OTSC, and the OAL therefore transmitted the matter back to the Department for final disposition having determined that Respondent's request for a hearing was withdrawn and he waived his rights to a hearing, and the violations in the OTSC were deemed admitted pursuant to N.J.A.C. 11:17D-2.1(b)(1); and

IT FURTHER APPEARING, that in Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987), the Supreme Court established seven factors to be considered in determining the imposition of civil fines in administrative proceedings ("Kimmelman Factors"); and

IT FURTHER APPEARING, that the seven Kimmelman Factors are as follows: (1) the good or bad faith of the defendant; (2) defendant's ability to pay a civil fine; (3) the amount of profits obtained from the illegal activity; (4) the injury to the public; (5) the duration of the misconduct; (6) the existence of criminal or treble damages actions; and (7) the past violations of defendant; and

IT FURTHER APPEARING, that the Kimmelman Factors apply to this matter as follows: (1) Respondent showed bad faith by providing false information in an insurance license application and failing to notify the Department of the entry of a default judgment against him; (2) Respondent has not provided any evidence of his inability to pay a civil fine; (3) Department has no information as to the income/profit, if any, received by Respondent during his two year period of licensure; (4) there was injury to the public because the Department relied upon the false representations made

in Respondent's license application and Respondent was granted a license under false pretenses;
(5) Respondent's violations were separate isolated incidents and not part of a continuous scheme;
(6) no criminal or treble damages actions have been filed against Respondent regarding his illegal activity; and (7) Respondent has no prior violations; and

NOW, THEREFORE, IT IS on this 31st day of July, 2024,

ORDERED, that the charges contained in Counts Four and Six of Order to Show Cause E21-02 are deemed admitted by Brian J. Spak, pursuant to N.J.A.C. 11:17D-2.1(b)(1); and

IT IS FURTHER ORDERED, that Count Five of Order to Show Cause E21-02 is dismissed; 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 license of Spak is hereby **REVOKED** effective upon the execution of this Final Order by the Commissioner; and

IT IS FURTHER ORDERED, that Spak shall be responsible for the payment totaling \$6,000.00 in civil penalties for violations of the Producer Act cited above as follows:

Spak shall be responsible for the payment of civil penalties to the Division of Insurance Enforcement totaling \$5,000.00 for the Producer Act violations as described in Count Four of the Order to Show Cause; and

Spak shall also be responsible for the payment of civil penalties to the Division of Insurance Enforcement totaling \$1,000.00 for the Producer Act violations as described in Count Six of the Order to Show Cause.; and

IT IS FURTHER ORDERED, that pursuant to N.J.S.A. 17:22A-45(c), Spak, jointly and severally, shall be responsible for the reimbursement to the Department of the costs of

investigation totaling \$512.50. A true and exact copy of the Certification of Daxesh Patel, Department of Banking and Insurance Investigator, is attached hereto as Exhibit B. The Commissioner has reviewed the investigative costs application and finds the amount of time to be reasonable; and

IT IS FURTHER ORDERED, that Spak shall pay the above penalties and costs totaling \$6,512.50 to the Commissioner of Banking and Insurance, State of New Jersey, 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 days from the date of service of this Order; and

IT IS FURTHER ORDERED, that in the event full payment of the penalty and costs is not made, the Commissioner may exercise any and all remedies available by law, including but not limited to recovery of any unpaid penalties, with post-judgment interest, in accordance with the Penalty Enforcement Law, N.J.S.A. 2A:58-10 to -12; and

IT IS FURTHER ORDERED, that the civil penalty in this Final Order is 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 is 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. E21-02.


Justin Zimmerman,
Acting Commissioner