

STATE OF NEW JERSEY
BUREAU OF SECURITIES
153 HALSEY STREET
P.O. BOX 47029
NEWARK, NEW JERSEY 07101

IN THE MATTER OF:

NICHOLAS D'AMICO, JR. (CRD #2186445)
and DELTA ASSET MANAGEMENT, LLC

Respondents. :

**SUMMARY REVOCATION AND
PENALTY ORDER**

Pursuant to the authority granted to Laura H. Posner, Chief of the New Jersey Bureau of Securities ("Bureau Chief"), under the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq. ("Securities Law") and certain regulations thereunder, and based upon documents and information obtained during the investigation by the New Jersey Bureau of Securities ("Bureau"), the Bureau Chief hereby finds that there is good cause and it is in the public interest to enter this Summary Revocation and Penalty Order ("Order"), and makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

Delta and D'Amico

1. D'Amico (CRD# 2186445), residing in Middletown, New Jersey, is the Chief Executive Officer and Member-Manager of Delta Asset Management, LLC ("Delta").
2. D'Amico was registered with the Bureau as an agent of the following broker-dealers on the dates indicated:

- a. J.P. Turner & Company, LLC (CRD# 43177) (“J.P. Turner”), from August 10, 2010 to July 27, 2011; and
 - b. National Securities Corporation (CRD# 7569) (“National”), from July 27, 2011 to October 17, 2011. D’Amico registered with National again on August 30, 2012.
3. J.P. Turner and National are registered with the Bureau as broker-dealers.
 4. On January 25, 2010, D’Amico formed Delta, a New Jersey limited liability company with its principal place of business located at D’Amico’s residential address in Middletown, New Jersey. Delta has never been registered with the Bureau in any capacity.
 5. On April 21, 2010, shortly after forming Delta, D’Amico and his wife filed a Voluntary Petition under Chapter 7 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of New Jersey (Case No. 10-22051-RTL) (“D’Amico Bankruptcy Matter”), in which they listed total liabilities in excess of \$1.65 million.
 6. On August 27, 2010, the court in the D’Amico Bankruptcy Matter granted D’Amico a discharge of all eligible liabilities.

Global Alliance Capital and the Trader Agreements

7. Global Alliance Capital, LLC (“Global”) is a New Jersey limited liability company with a primary business address at 87 Main Street, Matawan, New Jersey 07747. Global was formed in 2009.
8. Global offered individuals the opportunity to trade securities as Class B Members of Global (“Global Members”) through Global’s trading platform.

9. Certain Global Members who actively traded the funds they placed in their Global account(s) entered into a “Trader Agreement of Global Alliance Capital, LLC” (“Trader Agreement”).

10. D’Amico executed a Trader Agreement on or about July 21, 2009, under which D’Amico, as a Global Member, could execute stock and options trades through the Global platform.

11. The Trader Agreement provided that Global would establish respective subaccounts (“Subaccount”) for Delta and D’Amico within Global’s master proprietary trading account. A Subaccount, defined as a “Designated Trading Account,” was an internal bookkeeping method used by Global to reflect the Global Member’s: (a) “capital contribution” funds that were available for trading; and (b) securities trading activity.

Delta Membership Interests

12. From in or about January 2010 through November 2011, D’Amico and Delta, through D’Amico, offered and sold securities in the form of limited liability company interests in Delta (“Delta Membership Interests”) to at least seven individuals (“Investors”).

13. The Investors entered into an “Operating Agreement of Delta Asset Management, LLC” (“Delta Operating Agreement”) with Delta, through D’Amico, and with “all persons who are Members of [Delta].”

14. The Delta Operating Agreement stated that Delta engaged “in business as a private pooled investment firm that engages in trading securities and[/]or options for [the Delta] [M]embers.”

15. According to the Delta Operating Agreement, Delta charged Investors a management fee (purportedly based on a percentage of an investor's account value) and a performance fee (purportedly based on a percentage of Delta's profit).

16. The Delta Operating Agreement also stated: "The Members of the Company, their respective agreed upon initial capital contributions, and the class of Interest held by each Member shall be as set forth on Exhibit A attached hereto and by this reference made a part hereof." Exhibit A of the Delta Operating Agreement purported to identify, among other things, every Investor's: (a) "Initial Capital Contribution"; (b) "Class of Interest"; and (c) "Percentage of Ownership."

17. According to the Delta Operating Agreement, the value of the Investors' capital accounts would be calculated "based on that Member's percentage share of ownership."

Delta TD Bank Account and Global Subaccounts

18. D'Amico and Delta, through D'Amico, established: (a) a checking bank account for Delta with TD Bank, N.A. for which D'Amico was the sole signatory ("Delta TD Bank Account"); and (b) six Subaccounts with Global, one of which was for D'Amico personally and five of which were used to trade Delta Investors' money (collectively, "Delta Subaccounts"). Only D'Amico could make trades in the Delta Subaccounts.

19. D'Amico deposited Investors' money into the Delta TD Bank Account, or instructed Investors to deposit money via wire transfer into the Delta TD Bank Account or Delta Subaccounts. With the exception of one Investor's funds, D'Amico then transferred Investors' money, from the Delta TD Bank Account into the Delta Subaccounts. The money in the Delta Subaccounts was then supposed to be used by D'Amico for trading in securities.

20. Global maintained an iBoss system (“iBoss”), a portal which allowed Investors online access to view the activity and value of their Subaccount, but not other Delta Subaccounts. Investors were not allowed to execute trades in any Subaccount through iBoss.

FRAUDULENT CONDUCT

21. From approximately January 2010 to approximately November 2011, D’Amico and Delta, through D’Amico, fraudulently raised \$242,000 through the offer and sale of Delta Membership Interests to at least seven Investors. Approximately \$216,000 of the money raised was either lost as a result of trading or misused by D’Amico for his and his family’s personal benefit.

22. As set forth below, in connection with the offer or sale of Delta Membership Interests, Delta and D’Amico, through D’Amico, made misrepresentations of material facts and omitted to disclose material facts to Investors.

Omissions Regarding D’Amico’s Bankruptcy

23. In connection with the offer and sale of Delta Membership Interests, D’Amico and Delta, through D’Amico, failed to disclose the existence of the D’Amico Bankruptcy Matter to any Investors.

24. D’Amico and Delta, through D’Amico, also failed to disclose to Investors that they would not comply with the bankruptcy provision of the Delta Operating Agreement. Specifically, the Delta Operating Agreement provided that in the event of the bankruptcy of any Member, including any Member-Manager: (a) “[a] person shall cease to be a Member”; and (b) “[Delta] shall be dissolved and its affairs wound up.” Contrary to these representations, D’Amico did not cease to be a member of Delta, nor did Delta dissolve and wind up its affairs.

D'Amico, instead, continued operating Delta, including offering and selling Delta Membership Interests, until at least November 2011.

Omissions and Misrepresentations Regarding Use of Investor Money

25. D'Amico and Delta, though D'Amico, misrepresented the use of Investors' money and omitted to disclose the misuse of Investor money.

26. For example, instead of transferring one Investor's \$8,000 investment from the Delta TD Bank Account to a Delta Subaccount, where the money was supposed to be used for trading in securities, D'Amico instead used the money to pay for his personal expenses, including automobile repairs, meals and groceries, medical expenses (including an animal hospital), utility bills, driving school fees, and purchases on "Microsoft Xbox Live." D'Amico also transferred part of this Investor's money to D'Amico's wife.

27. D'Amico also failed to disclose to Investors that he commingled Investor money with his personal money in the Delta TD Bank Account, which account he also used to pay for personal expenses.

Misrepresentations and Omissions Regarding Delta's Structure and Performance

28. D'Amico and Delta, through D'Amico, falsely represented to Investors that their money would be traded in a common "pooled" account with other Investors' funds whose identities, respective capital contributions, class of interest and percentage of ownership would all be disclosed in the Delta Operating Agreement.

29. In truth and unbeknownst to them, some Investors' funds were traded in a pooled account; other Investors' funds were deposited and traded in separate, non-pooled accounts; and another Investor's funds were never deposited in a trading account and, instead, were misused by D'Amico for his personal benefit as described above.

30. D'Amico and Delta, through D'Amico, also failed to disclose to Investors material information regarding Delta's overall financial condition and performance. Specifically, D'Amico and Delta, through D'Amico, materially overstated to Investors the value of their accounts and failed to disclose the true value of Delta's overall account balance. Indeed, D'Amico and Delta, through D'Amico, misleadingly told Investors that the value of their individual Subaccounts were greater than even the aggregate value of all of Delta's Subaccounts.

31. For example, on July 5, 2011, a Delta Subaccount suffered a single-day trading loss of over \$42,000, reducing the Subaccount's balance to *negative* \$41,845.33, which, in turn, reduced the overall value of Delta's Account at Global. This loss was not disclosed to or reflected to any Investors through the iBoss portal except to the Investor in whose Subaccount the loss had occurred.

32. D'Amico and Delta, through D'Amico, also falsely stated to the Investor in whose Subaccount the July 5, 2011 trading loss occurred that it was the result of manipulation by a third party. Specifically, D'Amico falsely stated in an email, dated July 13, 2011, to that Investor that he was "in the process of filing legal proceedings against the CBOE for manipulation" and that he "will make it right as quickly as possible."

33. In a February 6, 2010 email to an Investor, D'Amico and Delta, through D'Amico, falsely stated:

I have been up and running with my fund, and it is doing extremely well. The way the fund is structured makes it very possible for highly inflated returns, and decreased risk, as we have discussed.

34. In truth, by February 6, 2010, Delta had suffered a 7% loss and it had only been trading securities for less than one week. Specifically, between February 1, 2010 and February

6, 2010, Delta received money from just one Investor and, during that time, Delta's overall Subaccount value decreased from \$30,570 to \$28,445.31.

Misrepresentations and Omissions Regarding Fees

35. D'Amico and Delta, through D'Amico, failed to disclose that certain Investors were treated more favorably than other Investors were treated. For example, D'Amico and Delta, through D'Amico, charged management fees in accordance with the Operating Agreement for some Investors, but not for others. Specifically, D'Amico and Delta, through D'Amico, charged certain Investors an up-front management fee (reducing their capital contribution), while other Investors were not charged an up-front fee.

36. D'Amico and Delta, through D'Amico, also failed to disclose that the management fees and compensation were inconsistently defined in the Delta Operating Agreements. For example, in one Delta Operating Agreement, the management fee was defined in one place as an annual fee not to exceed 5% of a "Members Capital Account" and later in the same agreement was defined as a "one time fee at the time of each and every capital contribution to [Delta] by the member not to exceed 5% of the Members Contribution." In other Delta Operating Agreements, the management fee was defined as an annual fee not to exceed either 5% or 10% (depending on the Member) of a "Members Capital Account." Compensation to the manager was also inconsistently defined as a performance fee not to exceed either 45% or 50% (depending on the Member) of Delta's profit.

37. D'Amico, and Delta through D'Amico, also deducted trading and platform fees from some Subaccounts, but did not deduct those fees from other Subaccounts. D'Amico, and Delta through D'Amico, did not disclose this difference to Investors.

Misrepresentations and Omissions Regarding Ownership Interests

38. D'Amico and Delta, through D'Amico, misrepresented to Investors their respective ownership interests as Delta Members by selling more than 100% of the Delta ownership interest. For example, the sum of all seven Investors' ownership interests as Delta Members stated in aggregate of their respective Delta Operating Agreements equaled 379.598%. The Schedule K-1s issued to Investors also misrepresented Investors' ownership interests as Delta Members.

D'Amico failed to report his outside business activities and private securities transactions to National Securities Corporation and J.P. Turner

National

39. D'Amico was registered with the Bureau as an agent of National, from July 27, 2011 to October 17, 2011, and again on August 30, 2012.

40. National's Written Supervisory Procedures ("National Procedures") during both periods that D'Amico was affiliated with National included an "Outside Business Activity Policy," which stated that:

No person associated with the firm [National] in any registered capacity may be employed by, conduct business on behalf, and/or accept compensation from any other person or entity as a result of any business activity other than a passive investment outside the scope of his or her relationship with the broker dealer, unless prior written approval has been received from the CSO.

41. National Procedures further required disclosure as to "whether the applicant is currently engaged in or requesting approval for an outside business interest either as an employee, independent contractor, sole proprietor, officer, director, or partner of another person"

42. On or about July 18, 2011, D'Amico signed a National "Outside Business Interests" form ("National OBI Form") which stated that he was not "currently engaged in or requesting approval for an outside business interest either as an employee, independent contractor, sole proprietor, officer, director or partner of another person." At that time, D'Amico had an ownership interest in and operated Delta, and had been soliciting Investors from at least February 2010, and continued to do so after July 18, 2011.

43. On or about June 19, 2012, D'Amico submitted to National a signed Application For Association ("National Application"). Question 13 of the National Application asks, "Do you have any outside business interests? If yes please describe." Despite his certification that his answers in the National Application were "true and complete," D'Amico failed to disclose Delta's investment activities, and instead falsely answered "I have a shell corporation for the purposes of accounting for my brokerage business."

44. Additionally, on or about August 2012, D'Amico signed a Form U4. Question 13 of the Form U4, titled "Other Business," asked whether the applicant is "currently engaged in any other business" Despite executing trades in at least one Delta Subaccount throughout and after August 2012, D'Amico falsely answered "No."

45. On May 8, 2013, D'Amico submitted to National a certified National OBI Form that disclosed Delta as an outside business interest. D'Amico, however, falsely answered "No" to Question 2 of the National OBI Form that asked "Is the business investment related?"

46. D'Amico also failed to disclose to National that he maintained outside brokerage accounts at Global.

47. National Procedures and the forms documenting compliance require that agents maintain brokerage accounts at National, including those in which the agent has a financial

interest or equity ownership, or for which the agent has discretionary authority. Exceptions to this procedure require written approval from the Chief Supervisory Officer.

48. On June 25, 2012, D'Amico signed a National Outside Brokerage Accounts Form that disclosed two TD Ameritrade brokerage accounts, but failed to disclose his accounts with Global.

49. National Procedures additionally required prior written notice to and approval from the Chief Supervisory Officer prior to entering into any private securities transactions.

50. D'Amico's trading activity through Delta, including the sale of Delta Membership Interests, constituted private securities transactions that would have required prior written notice and approval pursuant to National's Procedures.

51. D'Amico neither gave notice to nor requested National's approval of his or Delta's outside brokerage accounts at Global or his or Delta's trading activity at Global.

52. Because of D'Amico's failure to report his private securities transactions and outside business activities to National, his Uniform Application ("Form U4") as filed with the Bureau, upon association with National, on both July 27, 2011 and August 30, 2012, were false and misleading.

53. Form U4 requires timely amendments to be filed in order to correct any inaccuracies currently present. Although he amended his Form U4 twenty-nine times during 2011 through 2014 while an agent of National, D'Amico failed to file any amendment with the Bureau to correct the inaccuracies and omissions of his Form U4.

J.P. Turner & Company, LLC

54. D'Amico was registered with the Bureau as an agent of J.P. Turner, from August 10, 2010 through July 27, 2011.

55. J.P. Turner's Written Supervisory System & Procedures Manual revised April 26, 2010 and June 15, 2011 ("JP Turner Procedures") state:

All representatives are required to disclose all Outside Business Activities for which they anticipate compensation... The representative must provide detailed information regarding nature of business, scope of responsibility, amount of compensation, time spent on business activity, and entity name JPT Registered Representatives that are affiliated with JPT Capital Management will evidence their outside activity by submission of updated affiliation information via CRD/IARD and ultimately reflected on the Registered Representatives' Form U4.

56. Despite these disclosure and approval requirements, D'Amico failed to disclose Delta to J.P. Turner.

57. The J.P. Turner Outside Employment Disclosure Form, signed by D'Amico on August 9, 2010, falsely declared that he was not "engaged in any other business or business activity either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise."

58. The J.P. Turner Compliance Acknowledgement Form, signed by D'Amico on August 9, 2010, attested that he did "**NOT** currently have employment outside of J.P. Turner / JPTCM" and failed to disclose the Delta TD Bank Account or the Delta Subaccounts at Global.

59. J.P. Turner Procedures additionally required prior written notice to and approval by J.P. Turner's Chief Compliance Officer prior to entering into any private securities transactions.

60. D'Amico's trading activity through Delta, including the sale of Delta Membership Interests, constituted private securities transactions that would require prior written notice and approval pursuant to J.P. Turner Procedures.

61. Because of D'Amico's failure to report his private securities transactions and outside business activities to J.P. Turner, his Form U4 as filed with the Bureau on August 10, 2010 was false and misleading.

62. Form U4 requires timely amendments to be filed in order to correct any inaccuracies currently present. Although he amended his Form U4 seven times during 2010 through 2011 while he was an agent of J.P. Turner, D'Amico failed to file any amendment with the Bureau to correct the inaccuracies and omissions in his Form U4.

CONCLUSIONS OF LAW

D'AMICO AND DELTA ENGAGED IN A PRACTICE OR COURSE OF CONDUCT THAT OPERATED AS A FRAUD OR DECEIT IN CONNECTION WITH THE OFFER AND SALE OF SECURITIES. N.J.S.A. 49:3-52(c)

63. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

64. D'Amico and Delta engaged in an act, practice or course of business that operated as a fraud and/or deceit upon the investors in violation of N.J.S.A. 49:3-52(c) by, among other things: (i) misrepresenting the use of Investors' money and omitting to disclose the misuse of Investor money; (ii) failing to disclose that certain Investors were treated more favorably than other Investors regarding their fees; and (iii) misrepresenting Delta's structure and performance.

65. Each violation of N.J.S.A. 49:3-52(c) upon each investor is a separate violation and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

**D'AMICO AND DELTA MADE MATERIAL MISSTATEMENTS OF FACT AND
OMITTED MATERIAL FACTS IN CONNECTION WITH THE OFFER, SALE AND
MANAGEMENT OF DELTA MEMBERSHIPS**
N.J.S.A. 49:3-52(b)

66. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

67. As more fully discussed above, D'Amico and Delta made materially false and misleading statements and/or omitted material facts to investors, in connection with the offer and sale of securities, in violation of N.J.S.A. 49:3-52(b).

68. Each violation of N.J.S.A. 49:3-52(b) upon each investor is a separate violation and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

D'AMICO FILED FALSE APPLICATIONS WITH THE BUREAU
N.J.S.A. 49:3-58(a)(1) and N.J.S.A. 49:3-58(a)(2)(i)

69. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

70. Pursuant to N.J.S.A. 49:3-58:

The bureau chief may by order deny, suspend, or revoke any registration if he [or she] finds: (1) that the order is in the public interest; and (2) that the applicant or registrant (i) has filed an application for registration which as of its effective date was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact.

71. D'Amico failed to report his outside business activities on his Forms U4 as filed with the Bureau.

72. This is cause pursuant to N.J.S.A. 49:3-58(a)(2)(i), to revoke D'Amico's registration.

73. Based upon the foregoing and pursuant to N.J.S.A. 49:3-58(a)(1) the revocation of D'Amico's registration as an agent is in the public interest.

D'AMICO MADE FALSE OR MISLEADING FILINGS WITH THE BUREAU
N.J.S.A. 49:3-54

74. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

75. Pursuant to N.J.S.A. 49:3-54:

It is unlawful for any person to make or cause to be made, in any document filed with the bureau...any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

76. D'Amico failed to disclose he had an outside business activity by failing to file a timely amendment and failing to report them at all.

77. Such actions constitute violation of N.J.S.A. 49:3-54, by constituting a false filing with the Bureau.

78. Each violation of N.J.S.A. 49:3-54 is a separate violation and is cause for the imposition of civil monetary penalties pursuant to N.J.S.A. 49:3-70.1.

D'AMICO WILLFULLY VIOLATED OR WILFULLY FAILED TO COMPLY
WITH A PROVISION OF THE LAW
N.J.S.A. 49:3-58(a)(1) and N.J.S.A. 49:3-58(a)(2)(ii)

79. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

80. Pursuant to N.J.S.A. 49:3-58(a): "The Bureau Chief may by order deny, suspend, or revoke any registration if he [or she] finds: (1) that the order is in the public interest; and (2) that the applicant or registrant ii) has willfully violated or willfully failed to comply with any provision of this act."

81. The conduct described above constitutes a willful violation or willful failure to comply with the Securities Law. This is cause pursuant to N.J.S.A. 49:3-58(a)(2)(ii), to revoke D'Amico's agent registration.

82. Based on the foregoing, the revocation of D'Amico's registration as an agent is in the public interest and necessary for the protection of investors.

**D'AMICO ENGAGED IN DISHONEST OR UNETHICAL PRACTICES IN THE
SECURITIES BUSINESS**
N.J.S.A. 49:3-58(a)(1) and N.J.S.A. 49:3-58(a)(2)(vii)

83. The preceding paragraphs are incorporated by reference as though set forth verbatim herein.

84. The conduct described above constitutes dishonest or unethical practices in the securities business. This is cause pursuant to N.J.S.A. 49:3-58(a)(2)(vii), to revoke D'Amico's agent registration.

85. Based on the foregoing, the revocation of D'Amico's registration as an agent is in the public interest and necessary for the protection of investors.

THEREFORE, it is on this ^{20th} ~~20~~ day of JULY 2016, hereby ORDERED that:

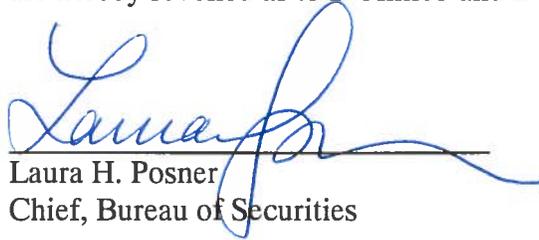
86. Nicholas D'Amico, Jr. and Delta Asset Management, LLC be and are hereby jointly and severally assessed civil monetary penalties in the amount of Four Hundred Thousand Dollars (\$400,000.00) pursuant to N.J.S.A. 49:3-70.1, for violations of the Securities Law described in this Order.

87. The civil monetary penalty is immediately due and payable to "State of New Jersey, Bureau of Securities," 153 Halsey Street, 6th Floor, Newark, New Jersey 07102. The civil monetary penalty payment shall be deposited in the Securities Enforcement Fund, pursuant to N.J.S.A. 49:3-66.1;

88. The agent registration of D'Amico be and is hereby revoked;

89. D'Amico and Delta are denied all exemptions contained in N.J.S.A. 49:3-50 subsection (a) paragraph 9, 10, and 11 and subsection (b); and

90. The exemptions to the registration requirements provided by N.J.S.A. 49:3-56(b), N.J.S.A. 49:3-56(c) and N.J.S.A. 49:3-56(g) are hereby revoked as to D'Amico and Delta.



Laura H. Posner
Chief, Bureau of Securities

NOTICE OF RIGHT TO HEARING

You are advised that upon service of notice of this Summary Revocation and Penalty Order issued by the Bureau Chief, Respondents shall have up to twenty (20) days to respond to the Bureau in the form of a written answer and written request for a hearing. A request for a hearing must be accompanied by a written response, which addresses specifically each of the reasons set forth in the Order which formed the basis for its entry. A general denial is unacceptable. Within five (5) business days of receiving the written answer and request for a hearing, the Bureau Chief shall either transmit the matter to the Office of Administrative Law for a hearing, or schedule a hearing at the Bureau of Securities. At any hearing involving this matter, an individual respondent may appear on his/her own behalf or be represented by an attorney. If an applicant fails to respond by filing a written answer and request for a hearing with the Bureau within the twenty (20) day prescribed period, the Order shall become a final order and remain in effect until modified or vacated.

NOTICE OF OTHER ENFORCEMENT REMEDIES

You are advised that the Uniform Securities Law (1997) N.J.S.A. 49:3-47 et seq., provides several enforcement remedies, which are available to be exercised by the Bureau Chief, either alone or in combination. These remedies include, in addition to this action, the right to seek and obtain injunctive and ancillary relief in a civil enforcement action, N.J.S.A. 49:3-69, and the right to seek and obtain civil penalties in an administrative or civil action, N.J.S.A. 49:3-70.1.

You are further advised that the entry of a Final Order does not preclude the Bureau Chief from seeking and obtaining other enforcement remedies against you in connection with the claims made against you in this action.