

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of,

INDEPENDENT INSURANCE AGENTS AND
BROKERS OF NEW YORK, INC., PROFESSIONAL
INSURANCE AGENTS OF NEW YORK STATE, INC.,
TESTA BROTHERS, LTD., and GARY SLAVIN

Petitioners,

For Judgment Pursuant to CPLR Article 78

-against-

THE NEW YORK STATE DEPARTMENT OF
FINANCIAL SERVICES; and MARIA T. VULLO, in her
official capacity as Superintendent of the New York State
Department of Financial Services,

Respondents.

Index No.:

NOTICE OF PETITION

Date Filed: November 16, 2018

PLEASE TAKE NOTICE that upon the annexed Verified Petition of Independent Insurance Agents and Brokers of New York, Inc., Professional Insurance Agents of New York State, Inc., Testa Brothers, Ltd., and Gary Slavin verified on November 16, 2018 (the "Petition"), and the exhibits thereto; the Affidavit of Gary Slavin dated November 13, 2018; the Affidavit of Stephen H. Testa dated November 13, 2018; Petitioners' Memorandum of Law in Support of the Verified Article 78 Petition to Annul the Amendments to Regulation 187 dated November 16, 2018, and all of the papers, pleadings, and proceedings had and filed, the undersigned will move this Court, at Friday Motion Term of the Supreme Court of the State of New York, County of Albany, located at the Albany County Courthouse, 16 Eagle Street, Room 102, Albany, New York, 12207, on the 21st day of December, 2018 at 9:30 a.m., or as soon thereafter as counsel can be

heard, for an order and judgment pursuant to Article 78 of the Civil Practice Law and Rules (“CPLR”) granting each of the Petition’s causes of action, and further:

(1) Declaring that DFS/Respondents, in adopting and implementing the First Amendment of the New York State Department of Financial Services to 11 N.Y.C.R.R. §224, New York State Insurance Regulation 187 (Suitability and Best Interests in Life Insurance and Annuity Transactions), has acted arbitrarily and capriciously, abused its discretion, violated lawful procedure, and taken actions affected by errors of law, including by promulgating regulations that are inconsistent with governing statutes;

(2) Declaring that DFS/Respondents, in adopting and implementing the First Amendment of the New York State Department of Financial Services to 11 N.Y.C.R.R. §224, New York State Insurance Regulation 187 (Suitability and Best Interests in Life Insurance and Annuity Transactions), has overstepped its regulatory authority.

(3) Declaring that DFS/Respondents, in adopting and implementing the First Amendment of the New York State Department of Financial Services to 11 N.Y.C.R.R. §224, New York State Insurance Regulation 187 (Suitability and Best Interests in Life Insurance and Annuity Transactions), has failed to comply with the rulemaking requirements of the State Administrative Procedure Act.

(4) Declaring that DFS/Respondents, in adopting and implementing the First Amendment of the New York State Department of Financial Services to 11 N.Y.C.R.R. §224, New York State Insurance Regulation 187 (Suitability and Best Interests in Life Insurance and Annuity Transactions), has acted arbitrarily and capriciously, abused its discretion, violated lawful procedure, and taken actions affected by errors of law, including by promulgating regulations that are unreasonable, arbitrary and capricious, and lacks a rational basis.

(5) Declaring that DFS/Respondents, in adopting and implementing the First Amendment of the New York State Department of Financial Services to 11 N.Y.C.R.R. §224, New York State Insurance Regulation 187 (Suitability and Best Interests in Life Insurance and Annuity Transactions), has infringed Petitioners' rights under the United States and New York State Constitutions.

(6) Declaring that DFS/Respondents, in adopting and implementing the First Amendment of the New York State Department of Financial Services to 11 N.Y.C.R.R. §224, New York State Insurance Regulation 187 (Suitability and Best Interests in Life Insurance and Annuity Transactions), has acted arbitrarily and capriciously, abused its discretion, violated lawful procedure, and taken actions affected by errors of law, including by promulgating regulations that improperly extend the agent/broker relationship in contravention of longstanding common law rules;

(7) Issuing an order and judgment vacating and annulling the First Amendment of the New York State Department of Financial Services to 11 N.Y.C.R.R. §224, New York State Insurance Regulation 187 (Suitability and Best Interests in Life Insurance and Annuity Transactions) in its entirety, or in the alternative vacating and annulling certain specific provisions thereof; and

(8) Granting such other and further relief as to the Court seems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR § 7804(c), answering papers shall be served upon the Petitioners at least five days before the return date herein and reply papers will be served at least one day before that date.

DATED: White Plains, New York
November 16, 2018

KEIDEL, WELDON & CUNNINGHAM, LLP

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