

SUPREME COURT OF NEW JERSEY

JAMES G. LOWE, M.D.,

Plaintiff-Appellant,

v.

BERNARD AUDET, RICHARD
LAVER, and THE CREATIVE
FINANCIAL GROUP, LTD.,

Defendants-Respondents.

DOCKET NO.: 090940

On Appeal from an Interlocutory Order
of the Appellate Division
Docket No.: A-4093-23

Sat Below:

Hon. Greta Gooden Brown, P.J.A.D.
Hon. Christine M. Vanek, J.A.D.

Law Division Docket No.
CAM-L-0633-24

Sat Below:

Hon. Steven J. Polansky, P.J.Cv.

Dated Submitted: February 2, 2026

**AMICUS CURIAE BRIEF ON BEHALF OF
NEW JERSEY ASSOCIATION FOR JUSTICE**

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PRELIMINARY STATEMENT

It is black letter law that the interpretation of a statute begins with its language. However, the decision below – which held under the learned professional doctrine that insurance brokers, as semi-professionals, are categorically exempt for liability under the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, et seq. (the “CFA” or the “Act”) – is not based on the current and operative language of the Act. Instead, it relies exclusively on case law whose holdings are specifically premised on the language of the CFA as it existed over half a century ago. Since that time, the Act has been significantly amended and expanded, and semi-professional exemption from CFA liability cannot be reconciled with the Act in its current form.

Learned professional exemption from CFA liability was first announced in Neveroski v. Blair, 141 N.J. Super. 365 (App. Div. 1976). The Neveroski court held that real estate brokers, though not learned professionals, are still exempt from CFA liability as semi-professionals. All subsequent applications of semi-professional exemption from CFA liability have been based squarely on this decision and its particular reasoning. At the time Neveroski was decided, an amended version of the CFA had already come into effect which expanded the Act to cover fraudulent practices in connection with the sale of “real estate.” However, based on the dates the underlying facts took place, the Neveroski court

did not address the newly amended Act and instead interpreted the previous version of the CFA. Accordingly, Neveroski was dead upon arrival.

Had the Neveroski court been called upon to interpret the newly amended statute – with its expansion to cover fraudulent practices regarding the sale of real estate – it would not have been able to rule that real estate brokers are exempt from CFA liability merely because they are semi-professionals. Nor would it have been able to rule that all semi-professionals are categorically exempt from CFA liability. Both conclusions would have been contrary to the express language of the amended Act – which remains operative today. It was only because the court was interpreting an older version of key statutory provisions – and, based thereon, applying a far narrower version of the CFA’s intent, scope, and reach – that it was able to reach its holding. Thus, the Neveroski court expressly stated that it *was not* expressing any opinion as to the construction of the amended Act.

Despite the foregoing, the court below held that insurance brokers, as semi-professionals, are categorically exempt from CFA liability. Its decision was based on its adherence to Plemmons v. Blue Chip Ins. Servs., Inc., 387 N.J. Super. 551, 565 (App. Div. 2006), which, in turn, held that “insurance brokers are ... comparable to real estate brokers, and are thus exempt from liability under the CFA for the reasons expressed by this court in *Neveroski*...” In coming to

this conclusion, the court below rejected the holding in Shaw v. Shand, 460 N.J. Super. 592, 614 (App. Div. 2019), which found that Neveroski has been abrogated, rejected Plemmons, and ruled that semi-professionals are not exempt from CFA liability under the learned professional doctrine. Notably, Judge Sabatino, who was part of the Plemmons panel, stated in Shaw that he had changed his mind regarding semi-professional exemption from CFA liability.

This Court should rule that the exemption from CFA liability under the learned professional doctrine does not extend to semi-professionals and should narrowly construe the doctrine's application only to those professions which have been historically recognized as "learned." Not only is this consistent with the current language of the Act, but it also serves to effectuate the CFA's broad remedial purpose. When the learned professional doctrine was first announced, the Act was more limited and directed at ordinary, everyday transactions. That is no longer the case, as the Act and its reach have significantly expanded.

For all these reasons, this Court should rule that the learned professional exemption does not extend to insurance brokers or other semi-professionals.

STATEMENT OF INTEREST

This amicus brief is respectfully submitted on behalf of the New Jersey Association of Justice ("NJAJ"), a statewide professional organization of over

2,000 attorneys in private practice and public service as well as paralegals, law clerks, and law students.

The objectives of NJAJ are to, *inter alia*, uphold and defend the Constitutions of the United States of America and the State of New Jersey; to advance the science of jurisprudence; to educate and train in all fields and phases of advocacy, and; to promote the administration of justice for the public good.

The members of NJAJ have appeared as amicus curiae in many cases in support of the public interest including, the proper administration of the legal system. NJAJ has a special interest in this case because it involves the construction of the appropriate scope of the New Jersey Consumer Fraud Act, which is one of the broadest consumer protection statutes in the United States. The decision of this Court may impact the rights of numerous individuals in the State of New Jersey and elsewhere. Accordingly, NJAJ's members and their clients will be directly impacted by the outcome of this case.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

NJAJ participated as amicus curiae before the Appellate Division. NJAJ relies on the procedural history and statement of facts of Plaintiff James G. Lowe, M.D.

LEGAL ARGUMENT

I. STANDARD OF REVIEW

The Supreme Court owes “no special deference to the legal determinations of the trial court or Appellate Division.” AC Ocean Walk, LLC v. Am. Guarantee & Liab. Ins. Co., 256 N.J. 294, 310 (2024). Accordingly, this Court reviews the decision of the Appellate Division de novo. Id.

II. SEMI-PROFESSIONAL EXEMPTION FROM CONSUMER FRAUD ACT LIABILITY IS INCONSISTENT WITH THE CURRENT TEXT OF THE ACT

Judicial interpretation begins “with the plain language of the statute.” Miah v. Ahmed, 179 N.J. 511, 520 (2004). In interpreting the CFA, ““we cannot ignore the plain meaning of the language employed by the Legislature.”” DeSimone v. Springpoint Senior Living, Inc., 256 N.J. 172, 181–82, (2024) (quotation omitted). In its current form, the CFA provides that:

The act, use or employment by any person of any commercial practice that is unconscionable or abusive, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any **merchandise or real estate**, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

N.J.S.A. § 56:8-2 (emphasis added). “Merchandise,” in turn, is defined as “any objects wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale.” N.J.S.A. § 56:8-1(c).

The “CFA's reach is not unbounded.” Lee v. First Union Nat. Bank, 199 N.J. 251, 263 (2009). The learned professional doctrine provides that “certain transactions fall outside the CFA's purview because they involve services provided by learned professionals in their professional capacity.” Id. “The rationale underlying the learned professional exception is that uniform regulation of an occupation, where such regulation exists, could conflict with regulation under the CFA.” Id. at 264. A profession has been considered “learned” “based on the requirement of extensive learning or erudition.” Shaw v. Shand, 460 N.J. Super. 592, 599 (App. Div. 2019). Historically, the primary examples of learned professionals have been doctors and lawyers. See Macedo v. Dello Russo, 178 N.J. 340, 344 (2004).

The learned professional doctrine was first announced by the Appellate Division in Neveroski v. Blair, 141 N.J. Super. 365, 377-80 (App. Div. 1976), superseded by statute as recognized by Lee, 199 N.J. at 259. The issue before the court in Neveroski was whether a real estate broker is protected from CFA liability by the learned professional exemption. Id. at 370. Critical to the Neveroski court’s decision was that it addressed the CFA “in the form it existed

at the time of the operative facts involved in th[e] litigation.” Id. at 376. Thus, the court’s decision was based on the language of N.J.S.A. §§ 56:8-1 and 2 as they had last been amended in 1971. Id. at 378-79 (quoting then-operative versions of N.J.S.A. §§ 56:8-1 and 2). The older versions of N.J.S.A. § 56:8-2 protected fraudulent practices in connection with the sale of “merchandise” but did not include the term “real estate.” Id. See also 1971 N.J. Sess. Law Serv. (Vol. 2) Ch. 247, § 1 (Assembly 194), p. 1394. The words “real estate” were only added to N.J.S.A. § 56:8-2 in 1975 and became operative in January of 1976 – three months prior to the Neveroski decision. See 1975 N.J. Sess. Law Serv. Ch. 294, § 1 (Assembly 196), p. 1184; Neveroski, 141 N.J. Super. at 377 n.3. The amendment adding “real estate” is critical, as the doctrine of semi-professional exemption was explicitly premised on the absence of these words from the statute and the resulting effect of that absence on the broader interpretation of the CFA. It makes sense, then, that the Neveroski court specifically stated that **“we [do not] express any opinions as to the construction of the act as amended.”** Neveroski, 141 N.J. Super. at 377 n.3 (emphasis added).

While finding that real estate brokers are “not on the same plane as other professions such as lawyers [and] physicians,” the Neveroski court nonetheless ruled under the older version of the Act that:

A real estate broker is in a far different category from the purveyors of products or services or other activities. He is in a **semi-professional status subject to testing, licensing, regulations** and penalties through other legislative provisions... [T]he nature of his activity as recognized as something **beyond the ordinary commercial seller of goods and services-an activity beyond the pale of the act under consideration.**

Id. at 379 (emphasis added). Thus, as a corollary to the learned professional doctrine, the Neveroski court also created the separate category of the licensed – but not “learned” – semi-professional. Id. Real estate brokers, as semi-professionals governed by regulation and testing, it ruled, are also exempt from liability under the CFA. Id. at 380. This holding was premised on a close reading of the earlier version of the CFA.

First, the Appellate Division based its decision on the definition of “merchandise” in N.J.S.A. § 56:8-1(c) in the old version of the Act. As the Neveroski court explained, in 1967 a bill was introduced to amend the definition of “merchandise” to include “real estate,” but that the words “real estate” were ultimately deleted from the enacted version of N.J.S.A. § 56:8-1(c). Neveroski, 141 N.J. Super.at 377-78. See also 1967 N.J. Sess. Law Serv. (Vol. 1) Ch. 301, § 1 (Assembly 191), p. 1017. The court concluded that “the Legislature eliminating th[is] [] area[] of commercial activity from the purview of the statute” meant that the older version of the CFA was not meant to cover the sale of real estate. Neveroski, 141 N.J. Super.at 378.

Second, the Appellate Division based its ruling on the interpretation of “merchandise” in light of the nature and purpose of the CFA as a whole as it then existed, finding that:

[T]he entire thrust of the Consumer Fraud Act is pointed to products and services sold to consumers **in the popular sense**... The legislative language **throughout the statute** and the evils sought to be eliminated point to an intent to protect the consumer in the context of **the ordinary meaning of that term in the market place**.

Id. at 378 (footnote omitted, emphasis added). That is, the CFA is inapplicable when “the nature of the services does not fall into the category of consumerism.”

Id. at 379.

Finally, the court based its decision on the meaning of “merchandise” in light of the language of the old version of N.J.S.A. § 56:8-1(c) as a whole. The older version of that provision defined “merchandise” as “any objects wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale.” See 1967 N.J. Sess. Law Serv. (Vol. 1) Ch. 301, § 1 (Assembly 191), p. 1017.

Employing the doctrine of *eiusdem generis*¹, the Neveroski court concluded that “[r]eal estate is wholly foreign to any of the listed examples

¹ “Eiusdem generis” means “[o]f the same kind or class.” Shaw, 460 N.J. Super. at 613.

specifically referred to in the definition” of “merchandise.” Neveroski, 141 N.J. Super. at 377-78. See also Id. at 380 (“Real estate, as such, is not included in the definition of the products encompassed by the act, nor is it a commodity which can be considered within the more general statutory language”).

It was this textual analysis of the older version of the Act which served as the basis for the Neveroski court to hold that the CFA was never intended to apply to semi-professionals who are subject to testing and licensing and “beyond the ordinary commercial seller of goods or services.” Id. at 379.

The addition of “real estate” to the text of the CFA – and its extension beyond everyday transactions and consumerism – directly undermines this text-based interpretation. The Neveroski court stated that “in the absence of clear and explicit language in the statute, a [real estate] broker ... [is] outside the scope of the persons sought to be covered by the Act.” Id. The amended version of N.J.S.A. § 56:8-2 provided that clear and explicit language, directly undermining Neveroski’s first and third textual arguments. With the amended Act extending to real estate brokers, it no longer made any sense to find, as Neveroski did, that semi-professionals subject to testing and licensing are beyond the pale of CFA liability. Indeed, to do so would result in some categories of semi-professionals being subject to the Act – like real estate brokers – while other categories of semi-professionals would remain exempt

from it. Without Neveroski's textual anchor placing *all* semi-professionals beyond CFA liability, continued application of this principle is rendered completely arbitrary and without any guiding standard. Additionally, the addition of “real estate” undermines the Neveroski court's conclusion that the CFA, as a whole, is limited to everyday consumer transactions. As the Appellate Division later recognized:

Viewed broadly, the amendment to *N.J.S.A. 56:8-2* adding real estate sales to the coverage of the Act **can be seen as negating the notion we espoused in *Neveroski* that a service provider whose activity is “something beyond the ordinary commercial seller of goods or services” is exempt from the Act when engaged in real estate sales activity.** *Neveroski, supra*, 141 *N.J. Super.* at 379, 358 A.2d 473.

Blatterfein v. Larken Assocs., 323 N.J. Super. 167, 179 (App. Div. 1999) (emphasis added).

Nevertheless, “[d]espite the Legislature's abrogation of Neveroski's holding, subsequent decisions have seemingly accorded its semi-professional exemption precedential weight.” Shaw, 460 N.J. Super. at 614. Such is the case here.

In the decision below, the Appellate Division held that insurance brokers, as semi-professionals, are exempt from CFA liability. See Lowe v. Audet, No. A-4093-23, 2025 WL 1743353, at *9 (App. Div. June 24, 2025), leave to appeal granted, 262 N.J. 143 (2025). As the Lowe court explained, its decision is based

on its “adhere[nce] to Plemmons [*v. Blue Chip Ins. Servs., Inc.*, 387 N.J. Super. 551, 565 (App. Div. 2006)].” Id. Plemmons, in turn, concluded that:

[I]nsurance brokers are subject to testing, licensing and regulation comparable to real estate brokers, and thus are exempt from liability under the CFA **for the reasons expressed by this court in *Neveroski*** and reaffirmed by the Supreme Court in *Macedo*.

Plemmons, 387 N.J. Super. at 565 (emphasis added).²

Plemmons, however, did not provide any analysis of Neveroski, that its holding regarding semi-professional exemption from CFA liability was specifically premised on its analysis of the old and superseded version of the Act, or that continued application of semi-professional exemption is contrary to the language of the current and operative Act. Nor did Plemmons attempt to explain the continued validity of Neveroski when that court specifically stated that it was expressing no opinion as to the amended version of the Act. Lowe suffers from the same deficiencies.

For all these reasons, this Court should rule that learned professional exemption from CFA liability does not extend to semi-professionals.

² Contrary to Plemmons, Macedo, 178 N.J. at 344, did not “reaffirm” Neveroski but instead discussed it in the course of explaining the 1976 amendment to the CFA because it was “the first judicial opinion addressing the applicability of the CFA to professionals.” See Shaw, 460 N.J. Super. at 615 n.13 (“Macedo did not, however, extend the [learned professional] exception to semi-professionals or licensed professionals”).

III. SEMI-PROFESSIONAL EXEMPTION FROM CONSUMER FRAUD ACT LIABILITY IS INCONSISTENT WITH THE ACT'S BROAD REMEDIAL PURPOSE

The decision below should also be reversed because semi-professional exemption from CFA liability is inconsistent with the Act's broad remedial purpose.

As this Court has explained, “[t]he language of the CFA evinces a clear legislative intent that its provisions be applied broadly in order to accomplish its remedial purpose, namely, to root out consumer fraud.” Lemelledo v. Beneficial Management Corp. of Am., 150 N.J. 255, 264 (1997). “To fully advance its remedial purposes, [courts] construe the Act “liberally in favor of consumers.”” Lee, 199 N.J. at 257 (quotation omitted). It is well established that “where the purpose of legislation is remedial and humanitarian, any exemption must be narrowly construed, giving due regard to the plain meaning of the language and the legislative intent.” Serv. Armament Co. v. Hyland, 70 N.J. 550, 559 (1976).

“The history of the [Consumer Fraud] Act is one of constant expansion of consumer protection.” Gennari v. Weichert Co. Realtors, 148 N.J. 582, 604 (1997). Thus, “[a]lthough initially designed to combat sharp practices and dealings that lured customers into purchases through fraudulent or deceptive means, the CFA is no longer aimed solely at shifty, fast-talking and deceptive

merchant[s].” Shaw, 460 N.J. Super. at 607 (quotation and internal quotation marks omitted). Rather, “[t]he CFA's remedial goal is to establish a broad business ethic, promoting a standard of conduct that contemplates good faith, honesty in fact and observance of fair dealing.” Id. (quotation and internal quotation marks omitted).

This Court should adopt the Appellate Division’s ruling in Shaw, which, based on these principles, held that semi-professionals are not protected from CFA liability under the learned professional exemption and:

[I]deally th[e] doctrine [of learned professional exemption from CFA liability] should be narrowly construed to include only those professions who have historically been recognized as “learned” based on the requirement of extensive learning or erudition.

Id. at 618-19. See also Williams-Hopkins v. MedWell, LLC, No. A-0273-21, 2024 WL 1476821, at *16 (App. Div. Apr. 5, 2024), cert. den., 259 N.J. 378 (2024). As the court further explained, “[o]riginally, and historically, the word ‘profession’ was applied only to law, medicine and theology or divinity, and these were known as the three ‘learned professions,’ and it has frequently been said that formerly these three disciplines were known as ‘the professions.’” Shaw, 460 N.J. Super. at 611, quoting Plaza Bottle Shop, Inc. v. Al Torstrick Ins. Agency, 712 S.W.2d 349, 351 (Ky. Ct. App. 1986). In Macedo, 178 N.J. at 344-46, this Court noted that only lawyers and doctors have been identified as

learned professionals beyond the reach of the CFA so long as they are acting in their professional capacities. “Macedo did not, however, extend the exception to semi-professionals or licensed professionals.” Shaw, 460 N.J. Super. at 615 n.13.

Defendants, as insurance producers, are regulated by the New Jersey Insurance Producers Licensing Act, N.J.S.A. § 17:22A-26-48 (the “NJ IPL”) and the regulations promulgated thereunder. Based on the NJ IPL and the regulations, insurance producers, such as Defendants, cannot be considered learned professionals. The NJ IPL and the regulations establish the requirements necessary to become a licensed insurance producer. The educational requirements associated with becoming a licensed insurance producer fall far short of the “extensive learning or erudition” necessary to be considered a “learned professional” like doctors or lawyers. The educational requirements for insurance producers are limited to completing a State-approved education course of 20 hours of education for each type of insurance license being sought. N.J.A.C. § 11:17-3.4. They also have to pay a fee, pass a test for the lines of insurance (i.e., life, health, property, casualty and personal) for which they seek a license, complete an application and pass a background check. N.J.S.A. § 17:22A-32. A review of the NJ IPL and the regulations shows that there is no requirement for a high school diploma, a GED, or any level of formal education whatsoever in order to obtain an insurance producer license in New Jersey. The

educational requirements for insurance producers are less than the requirements for the home inspector in Shaw, and far below the level of “extensive learning or erudition,” necessary to be considered a “learned professional” under New Jersey law. Shaw, 460 N.J. at 618-19.

Accordingly, semi-professional insurance brokers should not be afforded the protections of the learned professional exemption. To do so would extend the exemption well beyond its limited origins and “would unfairly restrict the ability of private litigants and the Division [of Consumer Affairs] to seek redress for fraudulent commercial practices.” Id. at 620. Such an interpretation “threatens to become the exception that swallows the rule.” Id. at 618.

Nor is this conclusion undermined by Plemmons’ conclusion that semi-professionals are categorically exempt from CFA liability because they are subject to testing and regulation. 387 N.J. Super. at 564. As the Shaw court explained, that conclusion is “inconsistent” and “cannot be squared” with this Court’s decision in Lemelledo. 460 N.J. Super. at 599, 616. See also Williams-Hopkins, 2024 WL 1476821 at *16 (“semi-professionals are not encompassed in the learned professional exemption simply because they are subject to regulation”).

For all these reasons, this Court should rule that learned professional exemption from CFA liability does not extend to semi-professionals.

CONCLUSION

For all the foregoing reasons, this Court should rule that insurance brokers and other semi-professionals are not exempt from CFA liability under the learned professional doctrine and reverse the decision of the Appellate Division.

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