

1 State of New Hampshire Banking Department

2 In re the Matter of:)Case No.: 10-184
3 State of New Hampshire Banking))
4 Department,))
5 Department,) Objection to Motion to Vacate (as filed by
6 and) all Respondents from the February 21, 2012
7 Assets Recovery Center, LLC,) Order to Cease and Desist
8 d/b/a Assets Recovery Center of))
9 Florida, Daniel Ferdinand))
10 Coosemans, and John R. Olsen,))
11 Respondents))
12

13 OBJECTION TO RESPONDENTS' MOTION TO VACATE

14 Now comes Maryam Torben Desfosses, on behalf of the New Hampshire Banking
15 Department ("Department") in the above captioned matter, and Objects to the
16 Motion to Vacate (Respondents' Response and Objection to Order to Cease and
17 Desist) filed by Assets Recovery Center, LLC, d/b/a Assets Recovery Center
18 of Florida, Daniel Ferdinand Coosemans, and John R. Olsen ("Respondents")
19 from the February 21, 2012 Order to Cease and Desist ("Motion to Vacate")
20 and states as follows:

- 21 1. Respondents filed the Motion to Vacate on May 16, 2012. The
22 Department has requested an extension with the Presiding Officer in
23 order to properly respond. Notwithstanding, the Department hereby
24 provides its preliminary response.

1 I. The Order to Cease and Desist is not Materially Improper and did not
2 Violate Respondents' Right to a Closed Hearing Pursuant to
3 RSA 397-B:9-a

- 4 2. The Department did issue a report of examination on April 19, 2010.
5 Respondents received the Report of Examination ("ROE") on May 19, 2010
6 and paid the examination fee of \$1,252.50 on July 12, 2010. The
7 Order to Cease and Desist was not issued until February 21, 2012.
8 Respondents never requested a closed hearing or any hearing.
- 9 3. The Department's Licensing Division indicated by an internal email
10 dated February 4, 2011 that Respondents were ready to be registered
11 based on a new application since the previous registration had expired
12 on December 31, 2009. However, the Department could not register
13 Respondents because there was no record of any annual report submitted
14 for 2008 or 2009 (the Department had an open referral for failure to
15 file the 2009 annual report), the Respondents had failed to facilitate
16 the previous examination and the Respondents had failed to increase
17 the surety bond to \$50,000.00 as required by statute in RSA Chapter
18 397-B.
- 19 4. On April 12, 2011, the Department had spoken with John Olson and
20 Angelica Duncan of Respondent Assets Recovery Center, LLC about the
21 issues identified in the examination.
- 22 5. On April 13, 2011, the Department received a response from Caroline
23 Bennett, Senior Financial Specialist, of Respondent Assets Recovery
24 Center, LLC. The explanations for missing annual reports and
25 examination materials and the surety bond were generalized.

- 1 6. On April 18, 2011, the Department emailed John Olson, Caroline Bennett
2 and Angelica Duncan stating the "[w]hile the material responses []
3 provided touched on some issues, Assets Recovery Center, LLC [] still
4 has not facilitated the examination dated 2009." Examiner Lea Sabean
5 was copied on the email and the Department asked for Respondents to
6 immediately provide to Ms. Sabean the loan files and the completed
7 officer questionnaire applicable at the time of the 2009 examination.
- 8 7. On April 18, 2011, Caroline Bennett submitted some information by
9 email only with respect to address changes and principal officer
10 changes.
- 11 8. On April 19, 2011, Examiner Lea Sabean emailed Caroline Bennett and
12 Angelica Duncan to ask the Respondents to submit the answers so that
13 the change in information is noted.
- 14 9. On April 21, 2011, Caroline Bennett emailed Examiner Lea Sabean with
15 additional questions.
- 16 10. On April 27, 2011, Examiner Lea Sabean spoke with Caroline Bennett and
17 emailed her the summary of their conversation, which included requests
18 for documents. Caroline Bennett wrote back to confirm she would submit
19 the materials.
- 20 11. On April 28, 2011, Examiner Lea Sabean emailed Caroline Bennett and
21 Angelica Duncan asking for borrower names and address for the accounts
22 listed by Respondent Assets Recovery Center, LLC and to include the
23 subservicing agreement between Respondent Assets Recovery Center, LLC
24 and Strategic Recovery Group ("SRG").
- 25 12. On May 2, 2011, the Department received correspondence from Respondent

Daniel Ferdinand Coosemans stating that Respondent Assets Recovery Center, LLC was applying for a NH Mortgage Servicer Registration and gave explanations as to particular matters and that it submitted with this letter the completed Officer Questionnaire and loan files applicable to the 2009 examination.

13. On May 10, 2011, the Department received an email from Caroline Bennett asking why Respondent Assets Recovery Center, LLC needed to provide information on SRG if Assets Recovery Center, LLC was withdrawing its application.

14. On May 10, 2011, the Department responded that it needed the information on SRG and that if Respondents fail to cooperate, the Department will issue a subpoena.

15. On May 16, 2011, the Department's Legal Division received an updated referral for enforcement action due to Respondents' failure to comply with the Department's requests and provide the requested examination materials.

II. The Department's Requests for Information did not Exceed the Bounds of its Authority as a Regulatory Agency who Regulated Respondents

16. As described in Paragraphs 2 through 15 above and incorporated herein by reference, the Respondents and employees of Respondent Assets Recovery Center, LLC (John Olson, Caroline Bennett and Angelica Duncan) failed to provide the information as requested by the Department even though the Respondents, on multiple occasions, indicated they would provide such materials.

17. Pursuant to RSA 397-B:9, I, the Department "may make such public or

1 private investigations within or outside of this state as it deems
2 necessary to determine compliance with" RSA Chapter 397-B.

3 18. Pursuant to RSA 397-B:9-a, I, the Department "may examine the business
4 affairs and records of any registrant or other person, whether
5 registered or not, as it deems necessary to determine compliance with"
6 RSA Chapter 397-B. Further, in determining compliance, the Department
7 "may examine the books, accounts, records, files, and other documents
8 or matters of any registrant or person."

9 III. Respondent Assets Recovery Center, LLC Was Required to Increase Its

10 Surety Bond to \$50,000.00

11 19. The Department required all registrants and licensees whose surety
12 bond requirements changed by statute to increase the amount of the
13 surety bond prior to any renewal. Respondents failed to increase their
14 surety bond and only maintained the \$20,000.00 until their
15 registration expired on December 31, 2009.

16 IV. The Department Has Authority to Enforce Federal Law, including the

17 Gramm-Leach-Bliley Act

18 20. The Department has authority to enforce matters concerning federal law
19 violations by registrants or persons subject to RSA Chapter 397-B.
20 RSA 397-B:2, II states that "[p]ersons subject to or registered under
21 [] RSA Chapter 397-B shall abide by applicable federal laws and
22 regulations, the laws and rules of this state, and the orders of the
23 commissioner. Any violation of such law, regulation, or rule is a
24 violation of [] RSA Chapter 397-B."
25

V. The Charges for Failure to File Annual Reports are Proper and are Allowable by Statute

21. RSA 397-B:4-a, III states that each "registrant shall file, under oath, an annual report with the banking department on or before March 31 each year concerning operations for the preceding year or registration period ending December 31 upon the form prescribed by the banking department. Any mortgage servicing company failing to file the annual report required by this section within the time prescribed may be required to pay to the department a penalty of \$25.00 for each calendar day the annual report is overdue up to a maximum penalty of \$2,500.00 per report."

22. The Respondents could have worked with the Department's Licensing Division on the forms available or allowed as acceptable forms by the Department.

VI. Respondents Failed to Properly File the Completed Officer's Questionnaire

23. The Department has re-reviewed the examination notes with the Department's Senior Examiner and discovered that the Officer's Questionnaire and loan files were provided, but were not provided until May 2, 2011. The initial request for examination materials and Officer's Questionnaire was received by Respondents on January 27, 2010. The Department was not supplied this information until May 2, 2011, after the referral for enforcement was submitted to the Department's Legal Division.

24. As to Respondents' arguments regarding forms and the legality of such

forms, Respondents failed to provide a specific statutory citation. To the extent that Respondents are referring to RSA 541-A:1,VII-a for the definition of "form," then Respondents have failed to include the exemption from that definition in their argument. "The term does not include any document, regardless of what the document is called, that (a) is provided by an agency to facilitate the submission of information that is required to be submitted to the agency by federal or state statute...and does not modify or add to such requirement..." RSA 397-B:9-a allows the Department to examine the books and records of the registrant and requires registrants to facilitate the examination. The Department has the ability to compel the production of documents and materials relevant to its investigation or examination. The Officer's Questionnaire merely asks for copies of documents and materials that the registrants should already have and are required to maintain, like policies, financials and bank statements.

25. The fact the items were provided significantly later than any material deadlines should be taken into consideration and does not absolve the Respondents of failing to facilitate or timely provide these examination materials when so required.

VII. Administrative Fines are Based on Statutory Violations and are therefore Proper

26. The violations are based on counts, which are based on statute. The maximum the Department can charge per count is \$2,500.00, as stated in RSA 397-B:6, IV and RSA 397-B:6, V.

27. There were separate violations for each of the mortgage loans serviced

1 by Respondents without proper registration by the Department. Each
2 separate violation represents a count for unregistered activity and
3 therefore, the maximum for this particular series of violations is
4 \$10,000.00 as alleged by the Department for each Respondent.

5 WHEREFORE, Department respectfully requests

6 A. The Presiding Officer deny Respondents' Motion to Vacate (Respondents'
7 Response and Objection to Order to Cease and Desist);

8 B. The Presiding Officer issue a Notice of Hearing in this matter and
9 schedule the hearing date for 60 days from the date the Presiding
10 Officer signs the Order denying Respondents' Motion to Vacate
11 (Respondents' Response and Objection to Order to Cease and Desist);

12 and

13 C. Grant such further relief as is just and in the public interest.

14 Respectfully submitted by:

15 
16 Maryam Torben Desjosses
17 Hearings Examiner

7-16-12
Date

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ORDER

1. Finding it in the public interest, Respondents' Motion to Vacate (Respondents' Response and Objection to Order to Cease and Desist) is hereby DENIED;
2. The Department's request for a hearing in this matter is hereby GRANTED; and
3. The Department's Request to set the hearing date 60 days from the date the Presiding Officer signs the Order denying Respondents' Motion to Vacate (Respondents' Response and Objection to Order to Cease and Desist) is hereby GRANTED and a Notice of Hearing will be issued by the Presiding Officer.

SO ORDERED,

STEPHEN J. JUDGE, ESQ
PRESIDING OFFICER

Date

*See Notice of Hearing
issued on 12/6/12*

