

State of New Hampshire
Banking Department

In re:)	Case No.: 11-018
)	
The Modification Group, LLC and Robert)	
Walker.)	Order to Cease and Desist
)	
)	
)	

Now comes the State of New Hampshire Banking Department (the “Department”) commencing an adjudicative proceeding under the provisions of RSA Chapter 397-A and RSA Chapter 541-A against the respondents, the Modification Group, LLC (the “Modification Group”) and Robert Walker.

JURISDICTION

The Department licenses and regulates persons “engage[d] in the business of offering, originating, making, funding, or brokering mortgage loans from the state of New Hampshire or mortgage loans secured by real property located in the state of New Hampshire.” RSA 397-A:2, I.

RESPONDENTS

1. The Modification Group is an “active” domestic limited liability company incorporated in the State of Ohio. The Ohio Secretary of State lists the Modification Group’s registered agent as Robert Walker, 4204 Detroit Ave., Cleveland, OH 44113. The Modification Group has never held a New Hampshire mortgage broker/banker license.

2. Mr. Walker is an individual residing in Ohio with a mailing address of 11871 Nottingham Parkway, North Royalton, OH 44133. Mr. Walker has never held a New Hampshire mortgage broker/banker license.

FACTS

On December 15, 2010, the New Hampshire Attorney General's Office forwarded a complaint from a New Hampshire consumer about the respondents to the Department. The consumer has a mortgage loan secured by real property located in New Hampshire. The consumer alleges that in approximately April 2010, the Modification Group telephoned him and offered to negotiate a mortgage loan modification on his behalf. The Modification Group sent him a packet of documents that he completed and sent back to the entity. He also sent a check for \$665.00 in payment for the Modification Group's services. Additionally, he provided the Modification Group with his bank account information and authorization to debit his account.

The consumer further alleges that about one month later, the Modification Group contacted him and requested additional information. In June 2010, the Modification Group contacted him again to let him know that an attorney was negotiating with the consumer's bank to modify the mortgage.

Subsequently, the consumer called his bank. The bank told him they had not heard from the Modification Group. He called the Modification Group and the Modification Group told him that they were working with his bank. The consumer asked the Modification Group to stop debiting his account. He also called the bank and closed his account. The consumer states in his complaint that despite ending his relationship with the Modification Group, they continued to contact him.

The consumer provided the Department with the following documents attached to his complaint: (1) a letter from the Modification Group printed on the entity's letterhead dated November 29, 2010 addressed to the consumer; (2) a form titled "Request for Additional Information" printed on the Modification Group letterhead; (3) a letter from the Modification Group printed on the entity's letterhead dated November 23, 2010 addressed to the consumer; (4) an email dated June 16, 2010 sent to the consumer from "Client Support" at the Modification Group; (5) an undated letter to the consumer printed on the Modification Group letterhead; (6) a "Referral Program" form printed on the Modification Group letterhead; (7) a "Third Party Authorization Letter 1st Mortgage" printed on the Law Offices of Michael J. Auger¹ letterhead; (8) a Company Profile printed on the Modification Group letterhead; (9) a "Credit/Debit Card Authorization Form" printed on the Modification Group letterhead; and (10) an email from a case manager at the Modification Group to the consumer dated April 20, 2010.

Upon receipt of the consumer's complaint, the Department attempted to contact the respondents. A representative from the customer service department of the Modification Group, who did not otherwise identify himself, responded in a letter stating that the Modification Group had ceased all operations as of September 1, 2010. A hearings examiner from the Department responded to this letter, but the response was returned as "unclaimed."

Subsequently, the undersigned hearings examiner sent subpoenas duces tecum to the respondents via certified mail with return receipt requested. The return receipt showed that the respondents received the subpoenas but failed to respond with the requested documents. Consequently, the Department commenced this adjudicative proceeding.

¹ The Department's investigation into the Law Offices of Michael J. Auger indicate that Attorney Auger died on or about October 26, 2010.

GOVERNING LAW

Under RSA 397-A:3, I, “[a]ny person . . . that, in its own name or on behalf of other persons, engages in the business of making or brokering mortgage loans secured by real property located in this state shall be required to obtain a license from the department.” A “mortgage broker” is defined as “a person . . . who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly . . . [a]cts as an intermediary, finder, or agent of a lender or borrower for the purpose of negotiating, arranging, finding, or procuring mortgage loans.” RSA 397-A:1, XIII.

“The [Department] may issue a cease and desist order against any licensee or person who it has reasonable cause to believe is in violation of the provisions of [RSA Chapter 397-A] or any rule or order under [RSA Chapter 397-A].” Additionally, the State of New Hampshire Bank Commissioner (the “Commissioner”) “may by order, upon due notice and opportunity for hearing, assesses penalties . . . if it is in the public interest and the . . . respondent, or . . . any partner, officer, member, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the . . . respondent . . . has violated any provision of [RSA Chapter 397-A] or rules or orders thereunder.” RSA 397-A:17, I(a). The Commissioner may also “enter an order of rescission, restitution, or disgorgement of profits directed to a person who has violated [RSA Chapter 397-A], or a rule or order under [RSA Chapter 397-A].” RSA 397-A:17, VIII.

FINDINGS

Pursuant to RSA 397-A:18, II, the Department has reasonable cause to believe that the respondents have violated the following provisions of RSA Chapter 397-A:

1. RSA 397-A:3, I: The respondents knowingly or negligently violated RSA 397-A:3, I when they offered to negotiate the terms of the New Hampshire consumer's mortgage secured by real property located in New Hampshire in exchange for financial compensation without a license from the Department; and
2. RSA 397-A:12, VII: The respondents knowingly or negligently violated RSA 397-A:12, VII by failing to facilitate the Department's examination of the respondents when they did not comply with the subpoena duces tecum.

Pursuant to RSA 397-A:20, VI, this Order is necessary and appropriate to the public interest, for the protection of consumers, and consistent with the purposes fairly intended by the policy and provisions of RSA Chapter 397-A.

ORDER

Accordingly, pursuant to RSA 397-A:17, I(a) and RSA 397-A:17, II, the Commissioner orders as follows:

1. The respondents shall cease and desist from violating RSA Chapter 397-A and any rules or order under RSA Chapter 397-A;
2. The respondents shall provide restitution to the New Hampshire consumer pursuant to RSA 397-A:17, VIII;
3. The respondents shall be assessed an administrative fine of \$2,500 for knowingly or negligently violating RSA 397-A:3, I when they engaged in the business of brokering the New Hampshire consumer's mortgage loan without a license from the Department; and
4. The respondents shall be assessed an administrative fine of \$2,500 for knowingly or negligently violating RSA 397-A:12, VII by failing to facilitate the Department's examination of the respondents.

NOTICE OF RIGHT TO A HEARING

The respondents have a right to request a hearing in writing on this Order to Cease and Desist. If requested, “[a] hearing shall be held not later than 10 days after the request for such hearing is received by the commissioner.” RSA 397-A:18, II.

If the respondents “fail[] to request a hearing within 30 calendar days of receipt of such order, then such person shall likewise be deemed in default, and the order shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown.” Id.

RECOMMENDED by:

10/4/12
Date

_____/s/
Emelia A.S. Galdieri
N.H. Bar #19840
Hearings Examiner
State of New Hampshire Banking Department

ORDERED by:

10/4/12
Date

_____/s/
Ronald A. Wilbur
State of New Hampshire Bank Commissioner

CERTIFICATE OF SERVICE

I, Rebekah L. Becker, hereby certify that on October 5, 2012, a copy of this Order to Cease and Desist was sent to the following parties via U.S. Registered Mail First Class:

Robert Walker
11871 Nottingham Parkway
North Royalton, OH 44133

The Modification Group, LLC
c/o Robert Walker
4204 Detroit Ave.
Cleveland, OH 44113

_____/s/
Rebekah L. Becker
Paralegal, Consumer Credit Division
State of New Hampshire Banking Department