



State of New Hampshire

Banking Department

53 Regional Drive, Suite 200
Concord, New Hampshire 03301

Telephone: (603) 271-3561
FAX: (603) 271-1090 or (603) 271-0750

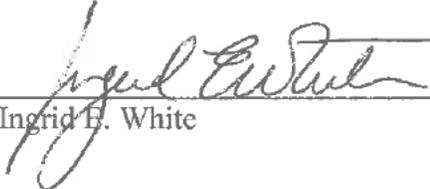
In Re: The Mortgage Specialists, Inc. and Michael Gill, Individually, and
As President of the Mortgage Specialists, Inc.

Case No. 15-163

The Hearing Officer in the above-referenced matter has submitted the attached Proposed Order on Respondents' Motion for Rehearing. The Proposed Order on Respondents' Motion for Rehearing is hereby adopted as my Final Order.

2/17/16

Date



Ingrid E. White

State of New Hampshire Banking Department

In re the Matter of:

State of New Hampshire Banking Department,

Petitioner,

and

The Mortgage Specialists, Inc., and Michael
Gill, Individually, and as President of The
Mortgage Specialists, Inc.

Respondents

Case No.: Case No. 15-163

**Proposed Order on Respondents' Motion
for Rehearing**

Proposed Final Order on Respondents' Motion for Rehearing

On December 24, 2015 the Presiding Officer issued a Proposed Final Order for the Bank Commissioner to review and adopt in this matter. On the same date, the Bank Commissioner adopted the Proposed Final Order as a Final Order.

The Order found (a) that The Mortgage Specialists, Inc. ("MSI") failed to show cause why it should not pay administrative fines in the total amount of \$55,000 for knowingly or negligently violating RSA 397-A:12, VII, XI and XV; RSA 397-A:2, III; 15 U.S.C. § 6801 et seq.; 15 C.F.R. § 314 (Gramm-Leach-Bliley Act); RSA 397-A:2, III, 31 U.S.C. § 5318(h); 31 C.F.R. § 1029.210 (Bank Secrecy Act); and RSA 397-A:12, VIII; and (b) that Respondent Gill, individually and as President of MSI, failed to show cause why he should not pay administrative fines in the total amount of \$55,000 for knowingly or negligently violating RSA 397-A:12, VII, XI and XV; RSA 397-A:2, III, 15 U.S.C. § 6801 et seq., and 15 C.F.R. § 314 (Gramm-Leach-Bliley Act); RSA 397-A:2, III, 31 U.S.C. § 5318(h), and 31 C.F.R. § 1029.210 (Bank Secrecy Act); RSA 397-A:12, VIII.

By Motion for Rehearing timely submitted on January 11, 2016, the Respondents requested a rehearing, to which the Department objected by Motion filed on January 19, 2016. For the reasons set forth herein, the Respondents' Motion for Rehearing is denied.

I. Respondents' Assertions of Errors of Fact and Errors of Law Do Not Satisfy The Elements Required Under RSA 541 and PART Jus 813 for a Rehearing.

The Respondents' Motion for Rehearing requests, in part, a rehearing of the evidence adduced at the hearing and through the parties' pleadings and memoranda. Specifically, paragraphs 1 through 8 of the Motion for Rehearing each question whether The Mortgage Specialists or Respondent Gill should be fined for violations of the Banking Department statutes applicable to Respondents' activities, as set forth in RSA 397-A:2, RSA 397-A:12, and RSA 397-A:21.

A. Assertions of Errors of Fact.

Respondents' Motion for Rehearing asserts that the Final Order manifests three (3) errors of findings of fact. The first concerns my finding that MSI did not facilitate the examination. No evidence has been presented to me that disturbs the finding that the Respondents failed to facilitate the examination. Respondents challenge this finding by asserting that the management of MSI began "providing information" to the Department after the Department's Report of Examination had been issued. The Final Order did find that production of the necessary documentation eventually did take place, but only after a seven month delay. Third, the Respondents argue that the Final Order failed to find that the Controller of The Mortgage Specialists was ill during "the pertinent times" of the examination and therefore was unable to

respond to emails. With respect to this third assertion of an error of fact, the Final Order granted the finding that the Controller at some point in the process had an illness but denied the requested finding that his absence contributed to Respondents' failure to facilitate the examination.

The Motion for Rehearing does not satisfy Jus 813.03(b) (1) because it fails to identify any errors of fact related to the applicability of the statutory penalties to the Respondents. Moreover, the Motion does not describe how any error of fact within the Final Order may have caused it to be unlawful, unjust, or unreasonable, or an abuse of discretion, or arbitrary, unreasonable, or capricious. Jus 813.04 (a).

B. Assertions of Errors of Law

Respondents assert that RSA 397-A: 2, III and RSA 397-A: 21, VI are each unconstitutionally vague, and therefore the administrative fines should be vacated. While neither in their brief nor in their presentation at the hearing did Respondents raise this argument, I address this issue herein.

The Respondents have made a facial challenge to the constitutionality of each statute. Each statute, Respondents argue, is unconstitutional because each (a) fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct each statute prohibits, and (b) each statute, by consequence, authorizes or even encourages arbitrary and discriminatory enforcement. *See, United States v. Lambert*, 446 F. Supp. 890, 897 (D. Conn. 1978); *see also State v. MacElman*, 154 N.H. 304, 307 (2006).

As the Department has noted in its Objection to the Motion for Rehearing, not only does a party challenging a statute as being void for vagueness face a heavy burden of proof in view of

the strong presumption of a statute's constitutionality, but the necessary specificity (of notice of penalties, for instance) need only be contained within the context of related statutes, prior decisions, or generally accepted usage. *State v. Porelle*, 149 N.H. 420, 423 (2003). In other words, the statutory and regulatory scheme set forth in RSA 397-A informs and places licensees on notice of the requirements for mortgage banker licensees and the penalties associated with violations of the statute.

RSA 397-A: 2, III clearly requires licensees to comply with applicable state and federal law. The statute directly puts licensees on notice that compliance with applicable federal and state law is expected, that any violation of any such law is itself a violation of RSA Chapter 397-A, and that "[s]uch federal laws and regulations include but are not limited to the Bank Secrecy Act (BSA), 31 U.S.C. section 5311 et seq and 31 C.F.R. Part X et seq when required by the BSA, and includes interpretive orders and similar directives. RSA 397-A: 2, III. Similarly, RSA 397-A: 21, VI places licensed mortgage bankers on notice that violations of RSA Chapter 397-A may subject such licensees to an administrative fine for each separate violation.

II. Recommendation of Presiding Officer on Respondents' Motion for Rehearing

Based upon the foregoing, this Presiding Officer finds that a rehearing is not warranted because the Respondents' Motion for Rehearing does not demonstrate that the Final Order was unlawful, unjust, or unreasonable. Jus 813.04 (a). The Presiding Officer recommends, therefore, that:

1. The Bank Commissioner order that Respondents' Motion for Rehearing be denied and that the Final Order be enforced in all respects; and

2. The payments of the fines are STAYED. The appeal process begins with the filing of a Notice of Appeal to the N.H. Supreme Court pursuant to the provisions of RSA Chapter 541. If no Notice of Appeal is filed, the stay shall be automatically lifted and payment shall be due on the 31st day following the date of this order. The filing of a notice of Appeal will continue the stay of the payment of the penalties until further order.

RECOMMENDED BY:

February 16, 2016



Andrew B. Eills, Esquire
Presiding Officer
State of New Hampshire
Banking Department

On February 16, 2016, the above Order was provided for review in portable document format (pdf), vial electronic mail, to the Deputy New Hampshire Bank Commissioner, Ingrid White.

By: 