

2/17/06

05-071 Financial Resources of the Lakes Region

Mike Burke, Esq

9:00pm scheduled conference call to discuss

- Now keeping a file destruction log
- 1 person overseeing safeguarding program
- Monetary Fine rather than
- \$17,000 fine
- detailed consent agreement
- draft agreement

March 9, 2006

Exhibit to:

Appendix A Page A-11  
Paragraph 6

1 State of New Hampshire Banking Department

2

3 In re the Matter of: ) Case No.: 05-071  
 )  
 4 State of New Hampshire Banking ) Consent Order  
 )  
 5 Department, )  
 )  
 6 Petitioner, )  
 )  
 7 and )  
 )  
 8 Financial Resources & Assistance of )  
 )  
 9 the Lakes Region, Inc., and Scott )  
 )  
 10 Farah, )  
 )  
 11 Respondents )

*FRA's lawyer requested a lower fine - I dropped to \$15K from \$17K. I plan to over payment plan if need be.  
 For your review.*

*Thp  
 OJA  
 4/24/04*

12  
13 CONSENT ORDER

14 This Agreement is entered into between the New Hampshire Banking  
 15 Department (hereinafter referred to as "the Department") and Respondents  
 16 Financial Resources & Assistance of the Lakes Region, Inc. and Scott  
 17 Farah, (hereinafter jointly referred to as "FRA" or "Respondents"). This  
 18 agreement applies to FRA, its officers, directors, employees, successors,  
 19 assignees, parents, subsidiaries, shareholders, and affiliates. The  
 20 Department and FRA together shall be referred to herein as the "Parties".

21 RECITALS

22 WHEREAS, the Department is authorized by RSA 397-A:2 to regulate  
 23 mortgage banker and broker activities where the mortgage is secured by New  
 24 Hampshire residential real estate; and

25 WHEREAS, RSA 397-A:12 licensees are required to abide by all applicable  
 state and federal laws and regulations; and

WHEREAS, ~~the~~ RSA 397-A:12, <sup>as</sup> authorizes the Department to investigate  
 alleged violations of laws or rules to determine whether any person has  
 violated or is about to violate any provision of the Chapter, rule or  
 Order given under the Chapter and perform examination of the Respondents'  
 mortgage business; and

Exhibit to:

Appendix A Page A-11  
 Paragraph 6

*A-11*

1 State of New Hampshire Banking Department

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18 agreement applies to FRA, its officers, directors, employees, successors,  
19 assignees, parents, subsidiaries, shareholders, and affiliates. The  
20 Department and FRA together shall be referred to herein as the "Parties".

21 RECITALS

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23 mortgage banker and broker activities where the mortgage is secured by New  
24 Hampshire residential real estate; and

25 WHEREAS, RSA 397-A:12 licensees are required to abide by all applicable  
state and federal laws and regulations; and

WHEREAS, ~~the~~ RSA 397-A:12, <sup>II</sup> authorizes the Department to investigate  
alleged violations of laws or rules to determine whether any person has  
violated or is about to violate any provision of the Chapter, rule or  
Order given under the Chapter and perform <sup>an</sup> examination of the Respondents'  
mortgage business; and

Exhibit to:

1 WHEREAS, FRA is a New Hampshire licensed Mortgage Banker, and FRA among  
2 other activities, makes mortgage loans secured by New Hampshire residential  
real estate; and

3 WHEREAS, the Department has conducted an examination of FRA's business  
4 practices of its principal location involving federally related mortgage  
loans secured by New Hampshire residential real estate; and

5 WHEREAS, the Department, following the examination, determined that FRA  
6 failed to enact sufficient safeguards of private consumer information in  
compliance with the Gramm-Leach-Bliley Act section 314; and

7 WHEREAS, FRA denies the allegations that it did not comply with New  
8 Hampshire or Federal laws and regulations; and

9 WHEREAS, the Parties agree that this Agreement constitutes the  
settlement of disputed claims between the Parties; and

10 WHEREAS, this Agreement shall not constitute an admission of  
11 wrongdoing, liability, or legal fault on the part of FRA for any conduct  
underlying this Agreement, nor shall it be construed as an admission that any  
12 person or entity acted wrongfully; and

13 WHEREAS, the Parties desire to avoid formal proceedings, and further  
expense, and to finally resolve this matter under the terms and conditions  
14 set forth below; and

15 WHEREAS, the terms of this Agreement are an appropriate disposition of  
this case and are in the public interest;

16 NOW, THEREFORE in consideration of the mutual promises and  
17 representations set forth herein, and in further consideration of the  
Department's reliance upon the substantial accuracy and good faith of the  
18 representations and submissions made to it by FRA, the Parties intending to  
be legally bound, agree as follows:

19 AGREEMENTS

- 20 1. This Agreement is effective on the date of the signature of the last  
21 signatory to the Agreement (hereinafter the "Effective Date").
- 22 2. Based on FRA's compliance with this Agreement, the Department will  
23 consider its 2004 examination/investigation of FRA's business  
24 practices closed, and the Department agrees to take no further  
25 enforcement action with respect to FRA's Gramm-Leach-Bliley  
violations and the practices described herein or for which the  
Department received information during this investigation, unless  
such practices recur after the Effective Date.

Exhibit to:

- 1  
2 *Recital*<sup>3</sup>. The Respondents as a licensee of the New Hampshire Banking  
3 Department must abide by all state and federal laws and regulations.  
4  
5 *R* 4. The Department conducted a regularly scheduled examination of the  
6 Respondents on or about October 11, 2004.  
7  
8 *R* 5. Through loan officers FRA accepts copies of documentation providing  
9 sensitive personal information (such as social security numbers,  
10 credit reports, etc), in order to assist ~~the~~ consumers in obtaining  
11 mortgage financing.  
12  
13 *R* 6. The examiner conducted an oral interview with Scott Farah, president  
14 of FRA, regarding his policies and procedures for  
15 handling <sup>and</sup> destruction of the documentation containing sensitive  
16 consumer information in compliance with the GLBA and accompanying  
17 FTC rules.  
18  
19 *R* 7. Mr. Farah informed the examiner that the process for disposing of  
20 documents, containing sensitive information, was to shred said  
21 documents. The shredding was specifically assigned to two  
22 designated employees who were to shred documents at a shredding  
23 machine located at the Respondent's <sup>principal</sup> location.  
24  
25 *R* 8. The examiner received verbal permission from Mr. Farah to remove two  
garbage bags from the dumpster outside the office to spot check for  
compliance with the verbal procedure.  
*R* 9. Upon review of the contents of the trash bags numerous documents  
containing sensitive information (such as credit reports, loan  
applications, etc), were found intact and were not shredded as  
previously indicated. See Exhibits 1-5.  
*R* 10. In addition, Mr. Farah informed the examiner that FRA did not have a  
written privacy policy as required by the GLBA. *↓?*  
*R* 11. Based on the above facts, the Department alleges that FRA failed to  
have a written safeguard policy as required by the GLBA.  
*R* 12. FRA also failed to implement its verbal policy concerning the  
treatment of sensitive consumer information, also in violation of  
the GLBA.  
*R* 13. FRA, a mortgage company, is a "financial institution" as that term  
is defined in Section 509(3)(A) of the Gramm-Leach-Bliley Act  
(GLBA) and is subject to the requirements of the Safeguards Rule and  
the Privacy Rule.

Exhibit to:

1 14. The acts and practices of respondents alleged have been in or  
2 affecting commerce, as "commerce" is defined in Section 4 of the  
3 Federal Trade Commission Act ("FTC"), 15 U.S.C. 44.

4 15. FRA will remit fifteen thousand dollars (\$15,000.00) to the  
5 Department ~~within eight (14) calendar days of the Effective Date.~~  
6 *simultaneously with the remittance of this signed -*

7 16. It is understood and agreed that, except as otherwise state herein,  
8 this Settlement Agreement expresses the complete settlement of FRA's  
9 liabilities in connection with the previously discovered GLBA  
10 violations as of the Effective Date of this Agreement.

11 17. FRA agrees to permanently cease and desist from violations of the  
12 GLBA that are alleged to violate state and federal law.

13 18. FRA agrees that it has voluntarily entered into this Agreement  
14 without reliance upon any discussions between the Department and  
15 FRA, without the promise of a benefit of any kind (other than  
16 concessions contained in this Agreement), and without threats,  
17 force, intimidation, or coercion of any kind.

18 19. FRA further acknowledges its understanding of the nature of the  
19 offenses stated above, including the penalties provided by law.

20 20. FRA agrees to waive any and all rights to a hearing and appeal  
21 thereof.

22 21. The Department expressly reserves its right to pursue any  
23 administrative or civil action or remedy available to it should FRA  
24 breach this Agreement or in the future violate the Act or rules and  
25 orders promulgated thereunder.

26 22. Nothing in this Agreement, absent default, will preclude FRA's  
27 licensure as a mortgage banker/broker in New Hampshire if it pays  
28 the above stated fines in full and remains in compliance with state  
29 and federal banking laws and regulations.

30 23. Each person who signs this Agreement in a representative capacity  
31 warrants that his or her execution of this Agreement is duly  
32 authorized, executed, and delivered by and for the entity for which  
33 he signs.

*signed -  
consent  
agreement  
order.*

Exhibit to:

1           WHEREFORE, based on the foregoing, we have set our hands to this  
2 Agreement, with it taking effect upon the signature of Peter C.  
3 Hildreth, Bank Commissioner.

4 Executed this \_\_\_\_ day of \_\_\_\_\_, 2006.

5 \_\_\_\_\_  
6 Scott Farah, individually and as representative for Financial Resources &  
Assistance of the Lakes Region Inc.

7 Entered this \_\_\_\_ day of \_\_\_\_\_, 2006.

8  
9  
10  
11 \_\_\_\_\_  
Peter C. Hildreth,  
Bank Commissioner

12  
13  
14 STATE OF

15 COUNTY OF

16  
17           The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
18 \_\_\_\_\_, 2006, by Scott Farah, President for Financial Resources &  
19 Assistance of the Lakes Region Inc. on behalf of the corporation and  
20 individually.

21  
22  
23 \_\_\_\_\_  
24 Notary Public / Justice of the Peace

25 My Commission Expires:

Exhibit to:

**Shaw, Andrea**

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**From:** Michael Burke [mburkelaw@earthlink.net]

**Sent:** Friday, February 17, 2006 8:42 PM

**To:** Shaw, Andrea

**Subject:** In re: Banking Dept. and Financial Resources and Assistance of the Lakes Region, Inc.

Andrea:

Thank you for taking the time to speak with me today regarding the complaint in the above-referenced matter. I have spoken to Scott Farah who has indicated a desire to enter into a consent agreement. I understand that you will be sending me a proposed draft of the agreement. In speaking with Mr. Farah he wished me to convey his concern about the size of the proposed fine and explore a possible way to bring it into line with his business concerns.

I look forward to speaking with you next week.

Michael Burke

**MSGTAG has notified the sender that you have read this message. This communication is confidential and intended to be privileged pursuant to attorney-client privilege and the work product doctrine. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by return email. Thank you**

Exhibit to:

2/21/2006

Appendix A Page A-11  
Paragraph 6

**Shaw, Andrea**

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**From:** Shaw, Andrea

**Sent:** Monday, April 24, 2006 4:17 PM

**To:** 'mburkelaw@earthlink.net'

**Subject:** Financial Resources and Assistance of the Lakes Region 05-071

Hi Mike-

I just handed a draft Consent Order over to our General Counsel for review. Once she signs off on it, I'll send it out for your review/comments.

Thanks!

Andrea J. Shaw

Staff Attorney

NH Banking Department

64B Old Suncook Road

Concord, NH 03301

Ph. 603-271-3561

Fx. 603-271-0750

Exhibit to:

Appendix A Page A-11  
Paragraph 6

4/24/2006

RECEIVED  
MAR - 7 2006  
NH BANKING DEPT.

LAW OFFICE OF GOULD AND BURKE  
15 NORTHVIEW DRIVE  
P.O. BOX 666  
MEREDITH, NEW HAMPSHIRE 03253

TEL 603-279-6502

FAX 603-279-1062

Michael E. Gould, Esquire  
Admitted in New Hampshire and Massachusetts  
megnh@earthlink.net

Michael Burke, Esquire  
Admitted in New Hampshire and Maine  
mburkclaw@earthlink.net

March 6, 2006

Robert A. Fleury, Deputy Bank Commissioner  
Banking Department  
64-B Old Suncook Road  
Concord, New Hampshire 03301

*In Re: The matter of State of New Hampshire v.  
Financial Resources and Assistance of the Lakes Region, Inc.  
and Scott Farah  
Case No. 05-071*

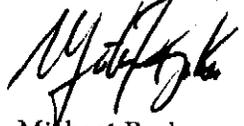
Dear Commissioner Fleury:

I enclose with this correspondence an original and two copies of the Respondents' Motion for Continuance for filing with the Commissioner in this matter.. A copy of this correspondence together with a copy of the enclosed Motion has been forwarded this day to Andrea J. Shea, Esquire, Staff Attorney for the Banking Department.

Thank you for your attention to this matter.

Very truly yours,

LAW OFFICE OF GOULD AND BURKE



Michael Burke  
MB/tbm

Enclosure

cc: A. Shea, Esquire  
S. Farah, FRA

11fra0111.doc

Exhibit to:

Appendix A Page A-11  
Paragraph 6

RECEIVED  
MAR - 7 2006  
NH BANKING DEPT.

THE STATE OF NEW HAMPSHIRE  
BANKING DEPARTMENT

\*\*\*\*\* Case No. 05-071  
\*  
In re the Matter of \*  
\*  
State of New Hampshire Banking Department \*  
Petitioner \*  
\*  
and \*  
\*  
Financial Resources and Assistance \*  
of the Lakes Region, Inc. and Scott Farah \*  
Respondent \*  
\*\*\*\*\*

MOTION FOR CONTINUANCE

NOW COMES Financial Resources and Assistance of the Lakes Region, Inc. and Scott Farah, Respondents in the above-entitled matter, by and through their attorney, the Law Office of Gould and Burke, PLLC, and say as follows:

1. That a petition in the above-entitled matter was brought by the State of New Hampshire Banking Department against the Respondents Financial Resources and Assistance of the Lakes Region, Inc. and Scott Farah on or about December 16, 2005 and an Order to Show Cause was issued by the Deputy Bank Commissioner Robert A. Fleury on or about December 20, 2005.
2. That the Respondents through their counsel filed an answer in response to said Petition and a Request to Be Heard on or about January 12, 2006.
3. That a hearing pursuant to the Petition and the Respondents' Request has been scheduled for March 9, 2006.
4. That the parties to this matter are exploring a stipulated resolution to the issues raised in the Petition.
5. That the Petitioner, through its counsel, and the Respondents, through their counsel, require additional time to reach a formal stipulated resolution to this matter.
6. That the Respondents, through their counsel, request a continuance of thirty (30) days in order to resolve the issues raised by the Petitioner in the Petition.
7. That counsel for the Respondents has spoken with counsel for the Petitioner, and she has specifically assented to this request for a continuance.

Law Office  
Of  
Gould & Burke  
15 Northview Dr  
Meredith, NH  
03253

Exhibit to:

WHEREFORE, the Respondents respectfully move this Commissioner of the State of New Hampshire Banking Department to continue the hearing scheduled for March 9, 2006 for a period of thirty (30) days and to thereafter schedule a hearing at the Commissioner's earliest convenience and for such other further relief as may be just.

Respectfully submitted,

Financial Resources and Assistance of the Lakes Region, Inc. and  
Scott Farah, Respondents

By their attorney,

LAW OFFICE OF GOULD AND BURKE, PLLC

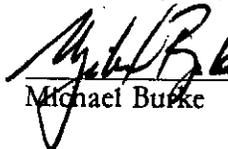
Dated: 3/6/06

By:   
Michael Burke  
P.O. Box 666  
Meredith, New Hampshire 03253  
(603)279-6502

Dated: March 6, 2006

CERTIFICATION

I hereby certify that a copy of the written Motion has been served this day upon the Petitioner, by mailing a copy of same, first class, postage prepaid, to Andrea Shaw, Esquire, Staff Attorney for the State of New Hampshire Banking Department.

  
Michael Burke

Law Office  
Of  
Gould & Burke  
15 Northview Dr  
Meredith, NH  
03253

Exhibit to: