

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-169
3 State of New Hampshire Banking)
4 Department,) Adjudicative Hearing Decision
5 Petitioner,)
6 and)
7 Home Express Mortgage Corp, and Dmitri)
8 Pidvyssotski,)
9 Respondents)

10
11 PROCEDURAL BACKGROUND

12 A prehearing conference and a hearing in this matter were held on
13 March 22, 2011 at the New Hampshire Banking Department ("Department"). The
14 Department was represented by Hearings Examiner Maryam Torben Desfosses.
15 Mr. Dmitri Pidvyssotski attended the hearing on behalf of Home Express
16 Mortgage ("Respondent"), and Dmitri Pidvyssotski ("Pidvyssotski"). Both
17 Respondent and Pidvyssotski elected to waive representation by counsel.

18 At the Prehearing Conference, the Department withdrew all counts
19 alleging violations personally by Pidvyssotski although he remains
20 responsible as owner and president of Respondent.

21 The Parties waived the statutory requirement that an order be issued
22 20 days after the hearing and granted the Presiding Officer additional time
23 to issue an order.
24
25

1 DISMISSAL OF COUNTS

2 During the prehearing conference, as contemplated by RSA Chapter 541-
3 A, the Department narrowed the issues by withdrawing certain counts and the
4 request for dismissal was GRANTED:

5 1. Relating to the "Loan Files" section on Page 1 of the July 1,
6 2009 Staff Petition ("Petition"):

7 a. Violation of RSA 397-A:6, I "Failure to Supervise" (2
8 counts);

9 b. Violation of RSA 397-A:17,I(g) "Failure to Supervise" (2
10 counts); and

11 c. Violation of RSA 397-A:17,I(k) "Dishonest or Unethical
12 Business Practices" (2 counts).

13 2. Relating to the factual allegations contained on pages 1 and 2
14 in paragraphs 3 through 5 of the Petition.

15 3. Relating to the "Appraisal" section on page 2 of the Petition:

16 a. Violation of RSA 397-A:17, I (g) "Failure to Supervise" (2
17 counts) .

18 4. Relating to the "Defrauding the Lender with Verification of
19 Deposit - Consumer E Loan File" section of the Petition as well
20 as the factual allegations contained in the paragraphs 10
21 through 14 on page 3 of the Petition:

22 a. Violation of RSA 397-A:6,I Failure to Supervise (1 Count);

23 b. Violation of RSA 397-A:17,I(g) Failure to Supervise (1
24 Count);

25 c. Violation of RSA 397-A:17,I(k) Dishonest or Unethical

1 Practices (1 Count);

2 d. Violation of Title 18 U.S.C. Section 1001, et seq. via RSA
3 397-A:2,III (1 Count);

4 e. Violation of Title 18 U.S.C. Section 1010 via RSA 397-A:2,
5 III (1 Count); and

6 f. Violation of Title 18 U.S.C. Section 1344 via RSA 397-A:2,
7 III (1 Count).

8 5. Relating to the "Defrauding the Lender with Stated Assets Loan -
9 Consumer F Loan File" section on page 4 of the Petition:

10 a. Violation of RSA 397-A:17, I (g) "Failure to Supervise" (1
11 count)

12 6. Relating to the "Violation of the Real Estate Settlement
13 Procedures Act" section on page 5 of the Petition:

14 a. Violation of the Real Estate Settlement Procedures Act,
15 Regulation X, 24 C.F.R. section 3500.7, Appendix B,
16 Illustration 13 and Appendix C via RSA 397-A:1 (b) (I) (5
17 counts)

18 7. Also withdrawn was a request for penalties against Pidvyssotski
19 in the amount of \$95,000.00. The Request to withdraw \$95,000.00
20 in administrative fines against Pidvyssotski is GRANTED.

21 **FACTS**

22 A license was issued to Respondent on March 25, 2003. The license
23 expired on January 1, 2010. *Ex. 1.* Pidvyssotski admitted at the hearing that
24 he is the president and 100% owner of Respondent. *Ex. 2.*

1 Appraisals:

2 A Request for Appraisal was sent by Respondent in regard to property
3 owned by Consumer C. *Ex. 3.* The document indicated that an appraisal of
4 \$216,000.00 was "needed." The appraisal actually came in at \$198,000.00.
5 *Id.* The higher value was sought in order to close the loan. The same issue
6 occurred with Consumer D where the request stated "Need this one to come in
7 @ \$195+." The appraisal came in at \$185,000.00.

8 Stated Asset Loans:

9 Loans were originated by Respondent. Consumer F received multiple
10 loans within two months. *Ex. 5-10.* Consumer F's monthly income was
11 \$3,475.00. A loan application to Fremont Investment listed Consumer F's
12 monthly income as \$6,800.00. This loan closed on August 21, 2006.

13 On September 29, 2006, another loan application for Consumer F was
14 signed with a monthly income of \$6,850.00. *Ex.9.* This was for a first and
15 second loan from Mortgage Lenders Network USA Inc.

16 Real Estate Settlement Procedure Act - Yield Spread Premium:

17 During the 2007 examination of the Home Express files, five (5) loan
18 files were identified in which the Yield Spread Premium was zero on the Good
19 Faith Estimate; yet, various amounts were charged according to the HUD
20 Settlement Statements. *Ex. 11-15.*

21 The consumer and amounts are as follows:

- 22 a. Consumer B - \$2,441.47;
23 b. Consumer G - \$2,430.00;
24 c. Consumer H - \$2,844.27;
25 d. Consumer I - \$4,185.00; and

1 e. Consumer J - \$1,050.00.

2 Real Estate Settlement Procedure Act - Credit Report Fee:

3 The 2007 Examination also revealed four (4) files in which certain
4 consumers were overcharged fees for credit reports. *Ex. 11, 16, 17, and 18.*

5 The Consumers and the amount overcharged are as follows:

6 a. Consumer B - \$50.00;

7 b. Consumer D - \$13.00 (two credit reports);

8 c. Consumer F - \$34.25; and

9 d. Consumer K - \$50.00.

10 Pidvyssotski testified but offered no explanation for identifying an
11 amount as "needed" on the appraisals. He asserted that the failure to
12 accurately reflect the Yield Spread Premium was a series of clerical
13 mistakes. He conceded that he never saw paystubs for Consumer F and that he
14 charged \$50.00 for credit reports even though that amount was greater than
15 the actual cost.

16 LEGAL CONCLUSIONS

17 1. Based on the evidence and the applicable law, I hold that the Respondent:

18 Appraisals:

19 a. Violated RSA 397-A:6,I (2 counts)

20 b. Violated RSA 397-A:17, I (g) (2 counts)

21 Defrauding the Lender with Stated Assets Loans:

22 c. Violated RSA 397-A:6, I. (1 count)

23 d. Violated RSA 397-A:17, I. (k) (1 count)

24 e. Violated Title 18 U.S.C. Section 1001 (1 count)

25 f. Violated Title 18 U.S.C. Section 1010 (1 count)

