

1	In re the Matter of:)	Case No.: 09-093
)	
2	State of New Hampshire Banking)	
)	
3	Department,)	
)	Adjudicative Hearing Decision
4	Petitioner,)	
)	
5	and)	
)	
6	SunnyMTG.com 866-768-CASH, LLC, and)	
)	
7	Sumit Gaddh,)	
)	
8	Respondents)	
)	
9)	

I. PROCEDURAL BACKGROUND

SunnyMTG.com 866-768-CASH, LLC ("SunnyMTG") was licensed as a Mortgage Banker with the New Hampshire Banking Department ("Department") from January 4, 2007 to August 27, 2009 when it surrendered its license. *Exhibit 3.*

Summit Gaddh ("Gaddh") is the 100% owner, president, treasurer, and secretary of SunnyMTG. *Exhibit. 3.* Gaddh was licensed as a New Hampshire Mortgage Loan Originator from July 28, 2009 until he surrendered his license on August 31, 2009. *Id.* Gaddh and SunnyMTG are jointly and severally liable for the violations identified in this Decision. Gaddh is liable for all violations by SunnyMTG.

The Department issued an Order to Show Cause to SunnyMTG and Gaddh (Collectively "Respondents") dated December 23, 2010 ("Order").

II. RESPONDENTS' ADDRESS

On September 25, 2008, in a Renewal Notice ("Renewal") sent to Respondents, *Exhibit 13*, the Respondents were asked to update their mailing address, phone numbers and E-mail address. The Respondents changed their E-

1 mail address but did not change the mailing address which remained: 1910 E.
2 Oakland Park Blvd., Fort Lauderdale, FL, 33306. The Department used this
3 address to send the documents to the Respondents.

4 The Order was a result of a Notice of Examination ("Notice") to both
5 Respondents. *Exhibit 6*. The Notice was sent by Certified Mail Return Receipt
6 to 1910 E. Oakland Park Blvd., Fort Lauderdale, FL, 33306. The Notice was
7 stamped "Return to Sender", "Unclaimed", "Unable to Forward" and was
8 returned to the Department on May 11, 2009. *Exhibit 6, 5 of 5 Pages*.

9 The Notice was sent to the same address via UPS on May 12, 2009 and
10 Proof of Delivery was signed by "Long" on May 18, 2009. *Exhibit 7, Pages 1*
11 *and 2*.

12 The Notice contained several timed requirements including requirements
13 for a written acknowledgment within seven calendar days and the production
14 of identified documents within 21 calendar days. *Exhibit 6*. The Notice also
15 contained the statement that "the lack of complete response to all requested
16 items within noted time frames may result in fines." *Id*.

17 In Paragraph 18 of the Order, the Department alleges that the
18 Respondents provided "a loan list and some of the requested items from the
19 [Notice]" on May 20, 2009. *Order P. 4*. There was testimony from Bank
20 Examiner Lorry Cloutier that a loan list and some information were received
21 on or about May 20, 2009. *Exhibit 7* established that "Long" signed for the
22 Notice on May 18, 2009, enough time for a response to reach the Department
23
24
25

1 1 Count

2 b.) Violation #2: Failure to comply with RESPA (RSA 397-A:2,III via
3 Real Estate Settlement Procedures Act, Regulation X, 24 C.F.R. Section
4 3500.14) - 1 Count

5 2. Respondent Sumit Gaddh:

6 a.) Violation #1: As a control person, failure to facilitate the exam
7 (RSA 397-A:12,V) - 1 Count

8 b.) Violation #2: Failure of officer and owner to respond to
9 Department inquiries (RSA 397-A:13,VI) - 1 Count

10 c.) Violation #3: As a control person, failure to comply with RESPA
11 (RSA 397-A:2,III via Real Estate Settlement Procedures Act, Regulation
12 X, 24 C.F.R. Section 3500.14) - 1 Count.

13 The Department is seeking a \$2,500.00 administrative fine for each of
14 the allegations above. The Department's alleged violations against the
15 Respondents also include a statutory fine of \$7,250.00 for failing to
16 provide examination materials as requested by the Department. The Department
17 also seeks revocation of the Respondents' licenses.

18 **IV. REQUEST TO AMEND**

19 The Notice of Order to Show Cause ("Order") contains a number of
20 statutory citations. Paragraph 22 alleges that fines have been accrued for
21 failure to provide requested files in a timely manner. The statutory
22 citation is RSA 397-A:13, IV. In the next sentence, the fine is identified
23 as \$50.00 a day. Paragraph 23 alleges that Respondent Gaddh failed to
24 respond to Department inquiries and cites to RSA 397-A:13, VI. In the next
25 paragraph, SunnyMTG is alleged to have violated RSA 397-A:12, VII. The

1 Department has requested that the reference to RSA 397-A:13, IV be changed
2 to RSA 397-A:11, II.

3 The Respondents' activities were governed by RSA 397-A. Exhibit 6,
4 dated April 6, 2009, specifically cites to RSA 397-A:11 in regard to the
5 request for documents. [RSA 397-A:11 applies when a request is made by the
6 Department. RSA 397-A:11, II.] As discussed below, this request was received
7 by the Respondents on May 18, 2009. Ex. 7.

8 In contrast, RSA 397-A:13 is self actuating. It requires licensees to
9 file an annual report and a financial statement by certain statutory
10 deadlines. The Department raised no issues in this matter regarding the
11 application of RSA 397-A:13. Nor could Respondents mistakenly believe that
12 they had allegedly violated RSA 397-A:13.

13 The state law portion of this matter involves record keeping under RSA
14 397-A:11 and examinations under RSA 397-A:12. In the Presiding Officer's
15 opinion, the Respondents were given sufficient notice and defended
16 themselves against violations of RSA 397-A:11, II for failure to provide
17 files and documents within the allotted time and RSA 397-A:12, VII for
18 failure to facilitate the examination. The Department's request to amend the
19 Order is GRANTED. The citation in paragraph 22 is changed from RSA 397-A:13,
20 IV to RSA 397-A:11, II. The citation in paragraph 23 is changed from RSA
21 397-A:13, VI to RSA 397-A:12, VII.

22 In the Notice of Order to Show Cause Hearing, the same issues arise.
23 The citation in paragraph 4b line 14 is changed from RSA 397-A:13, VI to RSA
24 397-A:12, VII.

1 V. SUBSTANCE

2 Turning to the heart of the matter, as required by statute, RSA 383:9
3 and 397-A:11, on April 10, 2009, the Department requested, among other
4 things:

- 5 1.) a list of all New Hampshire loans for the 18-month period prior to
6 April 10, 2009;
- 7 2.) a separate list of foreclosures for the same period;
- 8 3.) a copy of the most recent year-end financial statement;
- 9 4.) a copy of the most recent quarterly financial statement;
- 10 5.) certain work papers regarding the most recently filed New Hampshire
11 Annual Report; and
- 12 6.) two lists of license application forms. *Exhibit 6.*

13 In order to respond to the Notice, Schedule A and B were provided.
14 *Exhibit 6.*

15 In the Examination Notice dated July 7, 2009, the Department requested
16 the following:

- 17 1.) all New Hampshire loan files, with each file complete; and
- 18 2.) a completed Officer's Questionnaire. *Exhibit 8.*

19 The Department reiterated its request from the April 10, 2009 letter
20 for the following:

- 21 1.) the most recent year-end financial statement;²
- 22 2.) the most recent quarterly financial statement; and

23 _____

24 ² The entire bullet point reads: "A copy of the most recent year-end
25 financial statement (the most recent year end is 2008, the Department
received 2007). (Emphasis added.) The emphasized reference may be to the
material received on May 20, 2009.

1 3.) work papers in support of the most recently filed New Hampshire
2 Annual Report. *Exhibit 8.*

3 The Respondents provided some information as a result of the July 7,
4 2009 letter. *August 11, 2009 letter, Exhibit 10.* The Respondents provided
5 the most recent year-end financial statement for 2008. In Exhibit 10,
6 Paragraph 3, the Respondents state, through their agent, "as advised
7 previously³, SunnyMTG does not produce quarterly financial statements..."
8 (*Emphasis added.*)

9 The remainder of the August 11, 2009 letter is a demand that the
10 Department provide information to the Respondents. Remarkably, the documents
11 demanded were created by the Respondents in 2007. The Demand is based on the
12 Freedom of Information Act which applies to records held by the federal
13 government and not the Department. The gist of the letter is that the
14 Respondents don't know the answers to the routine questions asked by the
15 Department; haven't kept a copy of the submissions made in 2007; and, hope
16 that the 2007 submission will help with questions related to 2008.

17 Exhibit 10 also contains one side of additional correspondence between
18 the Respondents and the Department. After the 2008 Annual Financial
19 Statement, there is a letter dated September 3, 2009 from the Respondents in
20 answer to a communication from the Department dated September 1, 2009.⁴
21 *Exhibit 11.* The letter makes the point that SunnyMTG had "withdrawn" its
22

23 ³ Again, the sentence plainly states that there was earlier contact with the
24 Department, perhaps in May, 2009.

25 ⁴ This document is not part of the record. This may be because the
Respondents failed to file the mandatory documents and chose to attempt a
trial by ambush. This tactic will not be tolerated.

1 license because it does not have the money to pay for examinations and does
2 not have the resources to meet the Department's "unreasonable demands to
3 repetitive same questions and answers." The letter also refers to the
4 attached Officers Questionnaire and closes with the statement that "Your
5 swift attention to this matter will ensure your office's integrity."

6 This is an unorthodox way for a licensee to behave toward a licensing
7 agency. Also unorthodox was the response to the majority of the 31 questions
8 contained in the Officers Questionnaire. Most of the questions related to
9 2008 were answered by merely referring to the information provided to the
10 Department in November 2007. Even with the remarkable assumption that none
11 of the answers have changed since 2007, the Respondents' basic message is
12 "we can't be bothered to provide answers." Moreover, not all the answers are
13 the same for 2007 and 2008. For example, Questions 18 and 19 request
14 financial information "for the most recent 18-month period." The information
15 provided in November 2007 cannot be the correct answer to this request.

16 VI. WEBSITE

17 Questions 22 and 23 request media advertisement distributed in New
18 Hampshire, including website advertisements, if any, and the web address.
19 Here again, the Respondents insisted the answer was produced in 2007. Yet,
20 Exhibit 12 is a website that was available in New Hampshire at least in
21 September, 2009. The Questionnaire zeroed in on 2008 and it may be that
22 there was no website in 2008. Nevertheless, the Respondents needed to
23 provide a better answer than "the same information was furnished in
24 November, 2007." In these questions, information furnished in 2007 cannot
25 answer the question of what was happening in 2008.

1 constructive notice of the April 10, 2009 Notice at the latest on May 18,
2 2009. It is not necessary to determine whether the Respondents contacted the
3 Department on May 20, 2009 and acknowledged receipt of the Notice. If this
4 issue becomes relevant, based on all the evidence and the credibility of the
5 witnesses, I determine that the Respondents did contact the Department on
6 May 20, 2009 and acknowledged receipt of the Notice.

7 The Respondents failed to provide information in a timely manner;
8 failed to provide all information requested, and failed to facilitate the
9 examination.

10 In the past, the Presiding Officer has shied away from awarding the
11 full amount of requested fines out of a concern that awarding the full
12 amount should be reserved for a particularly egregious case. This is such a
13 case. The Respondents failed to file the mandatory witness and exhibit list.
14 The only witness for SunnyMTG, Mr. Gaddh, demonstrated over and over his
15 unwillingness to answer a straight question with a straight answer. In
16 almost 30 years of litigation experience, I cannot remember a witness who
17 made every effort to avoid telling the truth. On my judgment, based on the
18 behavior on the record, and the body language that cannot be perceived on a
19 cold record, Mr. Gaddh has no credibility.

20 This brings me to the issue of the website and the potential RESPA
21 violation. Mr. Gaddh insists the website was flawed but was reviewed by FHA
22 and a disclaimer added before the website went up. He also insists that the
23 website was only active in September, 2009, after the Respondents had
24 surrendered their licenses. Finally, he insisted that no \$100.00 payments
25

