GLENN A. PERLOW
BANK COMMISSIONER

INGRID E. WHITE
DEPUTY BANK COMMISSIONER

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-

American Home Relief Foundation, LLC, David A. Schmidt, Nick Stanco, Law Office of Michael A. Perry, and Michael A. Perry, Esquire

Case No. 10-130

The Hearing Officer in the above reference matter has submitted the attached Proposed Default Order. The Proposed Default Order is hereby adopted as my Final Order.

6/2/15
Date

Glenn A. Perlow

STATE OF NEW HAMPSHIRE

In The Matter of:	)	**Case No.: 10-130**
	)	
The New Hampshire Banking Department, Petitioner	)	**PROPOSED DEFAULT ORDER**
And	)	
American Home Relief Foundation, LLC, David A. Schmidt, Nick Stanco, Law Office of Michael A. Perry, and Michael A. Perry, Esquire, Respondent	)	

The record in this case consists of correspondence, exhibits and the pleadings. The Petitioner's 16 exhibits and Respondents' one exhibit were marked as full exhibits. The five above referenced Respondents received Notice that they were engaged in activity in violation of RSA 397-A in that they charged for mortgage loan modifications without mortgage broker or mortgage originator licenses and failed to perform any services. All of the Respondents failed to appear at the hearing noticed for April 16, 2015. Only Respondents Law Office of Michael A. Perry and Michael A. Perry (collectively "Perry") requested a hearing. Perry defaulted by failing to appear on April 16, 2015.

I recommend that the Amended Order be GRANTED.

PROCEDURAL CASE HISTORY

On August 27, 2010, Attorney Granger sent a certified letter to Perry and American Home Relief Foundation, LLC ("AHRF") at 5730 Executive Drive, Suite 230,

Baltimore, Maryland 21228. The letter was received on August 30, 2010. The letter alleged that Attorney Perry "and/or your company" were engaged in activities that required a loan originator license and did not have such a license. Exhibit 14

AHRF confirmed receipt of the letter and responded to Attorney Granger on September 1, 2010. Exhibit 15.

Attorney Granger confirmed a Stay of entry of Cease and Desist Order by letter dated September 9, 2010 sent to AHRF's Baltimore address with Attorney Perry as an addressee. Exhibit 16.

The stay was contingent upon conditions that evidently were not met by AHRF or Perry. The Bank Commissioner at the time, Ronald Wilbur, initially issued an Order to Show Cause and Cease and Desist on April 20, 2011 identifying the Respondents as AHRF and Perry. ("4/20/11 Order"). The 4/20/11 Order was sent by certified mail to AHRF at the last known address provided to the agency. Jus 804. AHRF failed to request a hearing.

On May, 10, 2011, Perry requested a hearing, denied any responsibility and identified David A. Schmidt and Nick Stanco as officers of AHRF. Exhibit 9. Commissioner Wilbur issued an Amended Order to Show Cause and Cease and Desist on November 1, 2011 adding MR. Schmidt and Mr. Stanco as Control Persons and Respondents. ("Amended Order")

The Amended Order was sent by certified mail to Mr. Schmidt and received on November 8, 2011 by "J. Schmidt." Mr. Schmidt failed to request a hearing.

The Amended Order was sent by certified mail to Mr. Stanco but was returned marked "Return to Sender, Unclaimed, Unable to Forward." Nevertheless, valid delivery

to Respondent AHRF's last known principal office constitutes service of Mr. Stanco. RSA 397-A:17, I; *See* Jus 804.03(c).

The Amended Order was sent by certified mail to AHRF at its last known principal office but was returned marked "Refused" and "Return to Sender." Service is effective when sent to the last known address given by the party to the agency. *Id.* RSA 397-A:18, II.

Respondents American Home Relief Foundation, LLC, David A. Schmidt and Nick Stanco defaulted by operation of law because they each failed to request a hearing or settle the matter with the Department[1]. RSA 397-A:17, I; RSA 397-A:18, II. When a party defaults for failure to request a hearing, the Amended Order shall become permanent and remain in full force and effect unless later modified or vacated by the Commissioner[2]. *Id.*

On December 1, 2011, the Department received Perry's request for a hearing and waiver of the requirement to hold the hearing in 10 days.

After several attempts to settle the matter and requests for proposed hearing dates from Perry, on February 24, 2015, the Department requested that the Presiding Officer prepare a Notice of Hearing and schedule a hearing date for Perry. This request was sent to Perry by certified mail.

On March 27, 2015, I, Stephen J. Judge, as Presiding Officer, issued a Notice of Hearing scheduled at 10:00 AM on April 16, 2015 at the New Hampshire Banking Department. The Notice of Hearing was sent by certified mail. The burden of proof was

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[1] On February 28, 2012, Attorney Perry provided Attorney Granger with the corporate records for AHRF and confirmed the addresses for Mr. Schmidt and Mr. Stanco. Exhibit 4.

[2] *But See* discussion *infra* regarding a different standard for failing to request a hearing.

placed on the Department. Witness and Exhibit lists were due ten days before the hearing. Attorney Torben Desfosses requested that this deadline be extended to April 10, 2015. Perry was copied on this email and copied on my April 3, 2015 email granting the request and offering to continue the hearing to April 23, 2015. On April 3, 2015, Attorney Torben Desfosses assented to the offered continuance but Perry never replied.

Perry sent an email to me on April 9, 2015. Despite the requirements in the Notice of Hearing and the Jus rules, Attorney Torben Desfosses was not copied on the email. Perry requested a variety of video or phone conferences to provide witness testimony from out of state. That same day, I provided a copy of the email to all parties and asked whether they assented to the request.

Perry provided witness and exhibit lists to Attorney Torben Desfosses on April 10, 2015, but failed to file them with me. Attorney Torben Desfosses filed timely witness and exhibit lists as required by the rules and arranged for me to receive Perry's lists on April 13, 2015.

The Director of the Consumer Credit Division, Attorney Jill A. Desrochers, filed a hand-delivered letter response to Perry's conference request on April 14, 2015 with an email copy to Perry. The Department was willing to discuss potential options but needed more specifics from Perry.

That same day, I issued a notice reminding Perry that material must be filed with all parties and reserving judgment on his video/telephone request until a pre-hearing conference on the day of the hearing. I also authorized electronic filing.

In an email on April 15, 2015 at 10:01 PM, Perry expressed his strongly held opinion that the Department should have a hearing room with Wi-Fi, video conferencing

or conference call. Perry claimed that he needed to produce witnesses from the DC area and that the distance to travel to New Hampshire is a hardship.

ADJUDICATIVE HEARING

On April 16, 2015, at 10 AM the adjudicative hearing was held before me at the New Hampshire Banking Department. The Department agreed on the record to allow Perry's Exhibit A (marked Exhibit ONE by Perry) to be received as a full exhibit.

I confirmed on the record that Respondents American Home Relief Foundation, LLC, David A. Schmidt and Nick Stanco each defaulted prior to the hearing:

- Respondent American Home Relief Foundation, LLC ("Respondent AHRF") was served the Amended Order to Show Cause and Cease and Desist ("Amended Order") on or about November 11, 2011. Respondent AHRF refused delivery. *See* Exhibit 1. Respondent AHRF failed to request a hearing or settle the matter on or before December 12, 2011 (which is the first business day after 30 days from the delivery date) as required to avoid Default.
- Respondent David A. Schmidt ("Respondent Schmidt") was served the Amended Order on November 8, 2011. *See* Exhibit 5. Respondent Schmidt failed to request a hearing or settle the matter on or before December 8, 2011 (which is 30 days from the delivery date) as required to avoid Default.
- Respondent Nick Stanco ("Respondent Stanco") was served the Amended Order on or about December 3, 2011 and marked unclaimed by the U.S. Postal Service. *See* Exhibit 6. Respondent Stanco

failed to request a hearing or settle the matter on or before January 2, 2012 (which is 30 days from the delivery date) as required to avoid Default.

Pursuant to Jus 810.02, I further declared on the record that Perry defaulted on April 16, 2015 by failing to appear at the hearing.

APPLICABLE RULES OF ADJUDICATORY PROCEEDINGS

There are no Jus Rules that I can find regarding the failure to request a hearing. There are rules regarding the failure to attend a hearing.

Jus 810.02 Failure to Attend Hearing. If any party to whom notice has been given in accordance with Jus 807.03 fails to attend a hearing, the presiding officer shall declare that party to be in default and shall either:

(a) Dismiss the case, if the party with the burden of proof fails to appear; or

(b) Hear the testimony and receive the evidence offered by a party, if that party has the burden of proof in the case.

Jus 807.03 sets out the requirements for the contents of the Notice of Hearing:

Jus 807.03 Notice of Hearing.

(a) A notice of a hearing issued by an agency shall contain the information required by RSA 541-A:31, III, namely:

(1) A statement of the time, place and nature of any hearing;

(2) A statement of the legal authority under which a hearing is to be held;

(3) A reference to the particular statutes and rules involved including this chapter;

(4) A short and plain statement of the issues presented;

(5) A statement that each party has the right to have an attorney represent them at their own expense; and

(6) For proceedings before an agency responsible for occupational licensing, a statement that each party has the right to have the agency provide a certified shorthand court reporter at the party's expense and that any such request shall be submitted in writing at least 10 days prior to the hearing.

The Notice of Hearing met these requirements. Moreover, as previously discussed, service was accomplished as required by Jus 804.03(c):

Jus 804.03 Delivery of Documents.

...

(c) Delivery of all documents relating to a proceeding shall be made by personal delivery or by depositing a copy of the document, by first class mail, postage prepaid, in the United States mail, addressed to the last address given to the agency by the party....

APPLICABLE LAW

The violations alleged in the Amended Order involve activities prohibited by RSA 397-A:3.

The Amended Order relies on RSA 397-A:17, I and II as well as RSA 397-A: 18, I and II to enforce RSA 397-A:3. See paragraphs 1 and 25 a., c. and d. The Amended Order states in paragraph 25 d. that if a respondent "fails to respond to this order and/or defaults then all facts as alleged herein are deemed as true." The language in the Order must be consistent with the controlling law.

This case presents two scenarios. Three Respondents failed to request a hearing. Perry requested a hearing and then failed to appear. Based on my analysis, the same standard applies to both groups.

RSA 397-A:18, II provides that the failure to request a hearing makes the order permanent by operation of law. Although the statute is silent on this point, I accept that if an order becomes permanent, the facts must be deemed to be true as against the parties

who fail to request a hearing. If this law applies, my task is ministerial. I merely acknowledge the permanency of the order by operation of law.

RSA 397-A:17, I contains seemingly contradictory language[3]. It contains the language cited above from RSA 397-A:18, II making the order permanent upon the failure to request a hearing. It also contains the following:

> If the licensee or respondent fails to request a hearing within 30 calendar days of receipt or valid delivery of such order or fails to appear at a hearing after being duly notified, or cannot be located after a reasonable search, such person shall be deemed in default and the proceeding may be decided against the person upon consideration of the order to show cause or other order, the allegations of which may be deemed to be true. (emphasis added)

I interpret the statutes in the light most favorable to the Respondents. I determine that the more difficult standard provided by the quoted language of RSA 397-A:17, I applies to this case. Under this standard, I have discretion to determine whether the facts alleged in the Amended Order are supported by the evidence and whether the matter should be decided against the Respondents.

FACTS

A complaint against AHRF was received on July 23, 2010 alleging that AHRF was unlicensed and charging an upfront fee for mortgage modifications. Exhibit 13. A letter was sent by the Department to AHRF and Perry on August 27, 2010 alleging that its activities required a license that it did not have. Exhibit 14. The Respondents admitted

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[3] While my search was by no means exhaustive, the same language can be found in RSA 397-B:3,VIII; RSA 399-A:7,II; RSA 399-D:13,I; and, RSA 399-G:18,I.

that they were engaged in mortgage modifications and were not licensed. Exhibits 10, 12, 15 and 16. Exhibit 8 contains a list of the thirteen New Hampshire consumers identified in paragraph 22 of the Amended Order who paid an upfront fee.

Perry argued in correspondence that he was not liable for the acts of AHRF and that the name Law Offices of Michael A. Perry "does not exist." Exhibits 4 and 9. I reject these arguments. Exhibit 8 contains a loan modification form requiring a $1,495 up front fee. The form provides that the agreement is between the consumer and Law Office of Michael A. Perry/American Home Relief Foundation. The Better Business Bureau identifies Attorney Perry as a contact and Law Offices of Michael A. Perry as an alternate name for AHRF. Exhibit 3.

Attorney Perry owned shares in AHRF. Exhibit 4. A Virginia court, the Circuit Court for the County of Fairfax, issued a decision on November 10, 2014 approving a one year suspension of Attorney Perry's license to practice law. Exhibit 11. The Virginia Court held that attorney Perry was the partial owner of AHRF and that AHRF, Perry, Schmidt and Stanco were engaged in a plan to market mortgage modification services to homeowners. Id. at paragraph 3. The Virginia Court examined complaints from Virginia consumers and held that Perry collected fees of $1495 upfront and that none of the consumers received any mortgage modification assistance. Id.at paragraph 54. The Virginia Court also held that the fees were deposited in an account owned by Law Office of Michael A. Perry. Id. at paragraph 56.

Prior to the hearing, Perry filed "Respondent Exhibit One." This document is both of dubious merit and reinforces the allegations in the Amended Order. The document is entitled Operating Agreement of AHRF. On its face, it is a 14 page document. Exhibit

One contains only 10 pages. Page one contains a space for the date of the execution of the document. The space is blank and the signatures on page nine are unwitnessed and undated. Paragraph 6.1 states that the members have made initial capital contributions in cash as set forth in Exhibit A. Exhibit A is contained on page 10 but the space to set forth the cash contributions is blank.

Exhibit A, page 10, does provide that Perry is a member with a one-third ownership of AHRF. Perry signed the document as a member. Page 9. There are two other members, Schmidt and Stanco, who were also one-third owners. Id.

One of the purposes of AHRF is to help facilitate communication between borrowers and their lenders. Page 1, paragraph 3. Each member is designated a General Manager of AHRF. Page 6, paragraph 9.2. This provision sheds a different light on Perry's claim that he was never an officer, director or principal of AHRF. See Exhibit 9.

PROPOSED FINAL ORDER

1. Each of the above-named Respondents defaulted.
2. Based on the record, including exhibits, I find that the allegations contained in the November 1, 2011 Amended Order are true. The Respondents violated RSA 397-A:3 and 14.
3. Respondents AHRF, Schmidt, and Stanco, are subject to the Amended Order.
4. All Respondents are hereby permanently ordered to cease and desist from any and all unlicensed mortgage loan modification, mortgage broker, and mortgage loan originator activity in New Hampshire or with New Hampshire consumers.
5. Respondents AHRF, Schmidt, Stanco, Law Office and Perry shall pay to the Department an administrative fine in the amount of $97,500.00 for a total fine

amount of $487,500.00, which is comprised of the following violations and counts thereof:

a. Violation #1: Unlicensed Mortgage Broker Activity (RSA 397-A:3, I) – 13 Counts per Respondent; and

b. Violation #2: Collecting an Advanced Fee (RSA 397-A:3, IV(m)) – 13 Counts per Respondent; and

c. Violation #3: Hiring an Unlicensed Mortgage Loan Originator (RSA 397-A:3, III) – 13 Counts per Respondent.

Payment of this amount shall be by check made payable to Treasurer, State of New Hampshire.

6. Respondents AHRF, Schmidt, Stanco, Law Office and Perry shall each be jointly and severally liable for the immediate repayment of $1,495.00 to each of the thirteen (13) New Hampshire Consumers (Consumers A through M), for a total of $19,435.00 in consumer restitution.

7. All Respondents herein shall be jointly and severally liable for any and all fines and consumer restitution.

The payment of the fine and consumer restitution is STAYED. The appeal process begins with the filing of a Motion for Rehearing within 30 days of the order. If no motion is filed, the stay shall be automatically lifted and payment shall be due on the 31st day. The filing of a motion for rehearing will continue the stay of the payment until a decision on rehearing is issued.

SO RECOMMENDED:

/s/ Dated: 6/2/15

Stephen J. Judge, Presiding Officer

On June 2, 2015, the above Order was provided for review in portable document format (pdf), via electronic mail, to New Hampshire Bank Commissioner, Glenn A. Perlow.

Doreen F. Sheppard, Paralegal