

1	In re the Matter of:) Case No.: 11-125
)
2	State of New Hampshire Banking)
)
3	Department,)
)
4	Petitioner,) Order Re: Motion to Dismiss with
) Prejudice
5	and)
)
6	CC Brown Law Offices (a/k/a CC Brown)
)
7	Law LLC and Law Offices of C.C.)
)
8	Brown), and Charles Craig Brown, Esq.,)
)
9	Respondents)

10

11 **ORDER ON MOTION TO DISMISS WITH PREJUDICE**

12 The Department issued an Order to show Cause and Cease and Desist in

13 regard to the Respondents, alleging a violation of RSA 397-A for among other

14 things, unlicensed mortgage broker activity. The Respondents countered that

15 they were licensed attorneys and therefore exempt from RSA 397-A. According

16 to the allegation in the Order to Show Cause, Paragraph 15, the Department

17 asserts that the exemption for licensed attorneys does not apply.

18 The Respondents filed a Motion to Dismiss with Prejudice ("Motion")

19 based on a decision by a Utah Court that Respondent Brown be transferred

20 from active status in the Utah bar to disability status ("Order"). The

21 Order is attached as Exhibit A to the Motion. The Order is a result of a

22 stipulation between the Utah Office of Professional Conduct and Respondent

23 Brown. Neither the Order nor the Motion indicates the disability that is the

24 basis for the transfer. For the reasons that follow, the Motion is DENIED.

1 I have a number of observations about the Order and the Motion.

2 First, from the face of the Order, Respondent Brown is competent to
3 enter into a stipulation to be transferred to disability status.

4 Second, the Order arises from "the underlying matters" which involve
5 the Office of Professional Conduct. In general, the heart of matters
6 involving an Office of Professional Conduct is whether a licensed attorney
7 can continue to practice law. Based on the stipulation and the Order,
8 Respondent Brown is prohibited from practicing law in Utah, a result that,
9 from the viewpoint of the Office of the Professional conduct, can be seen as
10 a successful, albeit temporary, resolution of the underlying matters. The
11 same is true for Respondent Brown; he has avoided the potential loss of his
12 license.

13 Third, the Order is open ended and is silent regarding the process
14 that may be used to restore Respondent Brown to active status and to end the
15 deferral of the underlying matters. There is nothing in the Motion that
16 obligates Respondent Brown to notify the Department if he returns to active
17 status.

18 Fourth, the Motion seeks a dismissal "with prejudice." Based on
19 Paragraph 6 of the Motion, the request is for dismissal "... until such time
20 as Charles Brown is restored to active status...." This request does not
21 constitute dismissal with prejudice. It is more aptly a request that the
22 New Hampshire proceeding be, in the words of the Order, "deferred and placed
23 in abeyance."

1 The preceding observations do not resolve the main issue presented by
2 the Motion:

3 How is Respondent Brown's status to practice law in 2012 relevant to
4 a complaint alleging that he was not licensed as a mortgage banker in 2011.
5 He was evidently licensed as an attorney in 2011 and may challenge the
6 Department on the basis of the exemption no matter what his status is in
7 2012.

8 I am aware that the Department has raised no objection and assented to
9 the motion.¹ While the Department has great latitude in how it pursues a
10 case, once the case has come before me, there may be a rare instance where I
11 am not convinced that an assented to motion should be granted. I am
12 absolutely convinced that when I rule on a motion I have to be able to
13 support the decision. In regard to this motion, I cannot support a decision
14 to grant the Motion.

15 It may be that I have not captured the parties' intent. Perhaps
16 Respondent Brown's disability is such that he cannot participate in his
17 defense. I note that the Respondents have alleged that the effect of the
18 Order is that Attorney Brown cannot direct the affairs of the other
19 Respondents.² I am not convinced that participation in the defense of an
20 administrative proceeding in New Hampshire while represented by New

21
22 ¹ I recognize that original counsel for the Department has withdrawn and new
23 counsel may not be in a position to scrutinize the matter as I have.
Nothing in this order should be viewed as critical of either counsel or any
party.

24 ² Respondent Brown relies on Article VI of Exhibit B. Motion Paragraph 4.
25 That article gives management authority to Respondent Brown "until replaced
or until he resigns." I cannot rely on an unverified motion to conclude
that Respondent Brown's status leaves the other Respondents with no
management.

1 Hampshire counsel constitutes the practice of law in Utah. To carry this to
2 an extreme, there is no requirement that the representative of a Respondent
3 in an administrative proceeding in New Hampshire be licensed as an attorney.
4 See JUS 807.04.

5 For the foregoing reasons, the Motion is DENIED. The parties are free
6 to raise the issue anew in light of the order. A verified motion setting
7 out the relevant facts may lead to a different result.

8
9 SO ORDERED.

10 SIGNED,

11 Dated: April 18, 2012

12 /S/
13 STEPHEN J. JUDGE, ESQ.
14 PRESIDING OFFICER
15
16
17
18
19
20
21
22
23
24
25