

State of New Hampshire Banking Department)
)Case No.: 11-170
In re the Matter of:)
)
State of New Hampshire Banking)
)
Department,)
)Consent Order
Petitioner,)
)
and)
)
Network Capital Funding Corporation, and)
)
Tri Minh Nguyen,)
)
Respondents)

CONSENT ORDER

The State of New Hampshire Banking Department (the "Department") finds and Orders as follows:

Respondents

1. Network Capital Funding Corporation ("Network Capital") is a corporation formed in the State of Nevada on July 5, 2002 and registered to conduct business in New Hampshire with the New Hampshire Secretary of State on March 16, 2010 with a principal office location in Irvine, California. Network Capital is licensed as a Mortgage Banker with the New Hampshire Banking Department ("Department") and has been since March 16, 2010.

2. Tri Minh Nguyen ("Nguyen") is the 100% direct owner, control person and Chief Executive Officer of Network Capital. Respondent Nguyen is also an active New

Hampshire Mortgage Loan Originator. The Nationwide Mortgage Licensing System & Registry ("NMLS") records indicate Respondent Nguyen was a licensed New Hampshire Mortgage Loan Originator from August 30, 2010 until January 1, 2012 and is currently licensed in 12 other states.

3. Network Capital and Nguyen are hereby collectively known as "Respondents."

Jurisdiction

4. The Department is authorized to regulate mortgage bankers pursuant to RSA Chapter 397-A. *RSA 397-A:2.*
5. The Commissioner has jurisdiction to issue orders to show cause and to cease and desist from violations under RSA Chapter 397-A and to revoke, deny, or suspend a license of a licensee and/or assess penalties pursuant to RSA Chapter 397-A. *RSA 397-A:17, RSA 397-A:18 and RSA 397-A:21.*

Facts

6. On September 28, 2011, the Department issued an Order to Show Cause and Cease and Desist against the Respondents, alleging, among other allegations, that the Respondents allowed certain employees not licensed in New Hampshire to originate New Hampshire residential mortgage loans by using the names of

employees who were licensed in New Hampshire on the closing documents for such loans. Based on such information, the Department further alleges that from July 2010 to April 2011, Respondents aided and abetted the above described activity with regard to fifty-five (55) New Hampshire consumers and that commissions were paid on such residential mortgage loan origination activity in the total amount of \$64,012.33 as follows:

Consumer 1:\$1,0004.58	Consumer 20:\$1,502.90	Consumer 39:\$1,379.08
Consumer 2:\$271.95	Consumer 21:\$786.25	Consumer 40:\$979.08
Consumer 3:\$2,887.45	Consumer 22:\$2,052.75	Consumer 41:\$729.12
Consumer 4:\$827.91	Consumer 23:\$596.52	Consumer 42:\$1,099.28
Consumer 5: (N/A)	Consumer 24:\$1,300.05	Consumer 43:\$1,022.45
Consumer 6: (N/A)	Consumer 25:\$1,127.99	Consumer 44: (N/A)
Consumer 7: (N/A)	Consumer 26:\$1,067.20	Consumer 45:\$455.20
Consumer 8: (N/A)	Consumer 27:\$930.22	Consumer 46:\$1,086.78
Consumer 9: (N/A)	Consumer 28:\$2,458.94	Consumer 47:\$1,185.28
Consumer 10: (N/A)	Consumer 29:\$959.35	Consumer 48:\$1,024.38
Consumer 11: (N/A)	Consumer 30:\$957.27	Consumer 49:\$793.57
Consumer 12:\$2,156.75	Consumer 31:\$996.01	Consumer 50:\$316.16
Consumer 13:\$1,764.53	Consumer 32:\$1,830.30	Consumer 51: (N/A)
Consumer 14:\$1,548.06	Consumer 33:\$824.01	Consumer 52:\$622.14
Consumer 15:\$1,030.26	Consumer 34: \$1,991.76	Consumer 53: \$4,096.49
Consumer 16:\$832.40	Consumer 35: \$2,187.24	Consumer 54: \$691.37

Consumer 17:\$2,019.40 Consumer 36:\$2,758.80 Consumer 55:\$1,696.14
Consumer 18:\$1,628.32 Consumer 37:\$1,000.26
Consumer 19:\$2,576.20 Consumer 38:\$2,960.00

7. Based on the foregoing, the Department alleges that Respondents failed to properly supervise certain of its employees from July 2010 to April 2011.
8. The Department also alleges that with regard to five (5) of the New Hampshire consumers, Respondents failed to provide an initial Good Faith Estimate ("GFE") within three (3) days of the consumer's application and required the consumers to submit supplemental documentation to verify the information provided on the application as a condition for providing a GFE to the consumer.
9. The Department further alleges that with regard to Consumer 5, Respondents failed to provide requested documentation to Consumer 5, including a Notice of Denial and that Respondents made a false or misleading statement to the commissioner regarding the Notice of Denial. The Department also alleges that Network Capital failed to supervise Nguyen and Mortgage Loan Originator Kristen Rebecca Steiner (who communicated with the New Hampshire consumer) ("Steiner"), that Nguyen failed to supervise Steiner, and that

- Respondents did not provide the consumer with an Adverse Action Notice within 30 days.
10. The Department acknowledges that Network Capital has submitted information demonstrating that it has adopted policies and procedures which are still in place to ensure that the aforementioned violations do not reoccur.
 11. During the request for information, Respondents cooperated with the Department and explained the circumstances around the aforementioned stated violations.

Governing Law and Penalties

12. Respondents are "Persons" as defined by RSA 397-A:1,XVIII.
13. The Originators are "Mortgage Loan Originators" as defined by RSA 397-A:1,XVII.
14. Respondents may be assessed an administrative fine not to exceed \$2,500.00 for each violation of RSA Chapter 397-A. *RSA 397-A:21, IV and V.*

Respondents' Consent

15. The Respondents hereby acknowledge that were an administrative hearing to be held in this matter, the Department would introduce evidence attempting to demonstrate that Respondents conducted activity that

violated RSA Chapter 397-A as mentioned above.

16. Respondents have voluntarily entered into this Consent Order without reliance upon any discussions between the Department and Respondents, without promise of a benefit of any kind (other than concessions contained in this Consent Order), and without threats, force, intimidation, or coercion of any kind. Respondents further acknowledge that they understand the allegations set forth in this action, including the potential penalties provided by law.
17. Respondents hereby acknowledge, understand, and agree that they have the right to notice, hearing, and/or a civil action and hereby waive said rights.

Order

18. **Whereas pursuant to RSA 397-A:20,VI,** this Consent Order is necessary, appropriate and in the public interest and consistent with the intent and purposes of New Hampshire banking laws, the Department orders as follows:
 - a. Pursuant to RSA 397-A:17 and RSA 397-A:18, Respondents shall not violate RSA Chapter 397-A and any rules or orders thereunder;
 - b. Pursuant to RSA 397-A:17, Network Capital's New Hampshire Mortgage Banker license is hereby

restricted for thirty (30) days from the effective date of this Consent Order, which is upon the Commissioner's signature. During this restricted time, Respondents can continue to process loans in the pipeline as of the effective date but Respondents cannot take, process, or originate new loan applications. Respondents represent that during this time period, Network Capital's compliance officer shall assist Respondents in implementing the terms of this Consent Order consistent with New Hampshire law;

- c. Pursuant to RSA 397-A:17,II(a) and (b) and RSA Chapter 397-A, the Respondents shall not conduct, aid and abet unlicensed mortgage loan origination activity in New Hampshire and from violating RSA Chapter 397-A;
- d. Pursuant to RSA 397-A:2,III, RSA 397-A:14-a and the Truth in Lending Act, Respondents shall properly disclose the proper terms pursuant to Section 226.24(d)(2) when Respondents advertise the rate or annual percentage rate (APR) and/or the repayment period;
- e. Respondents shall ensure all advertisements comply with RSA 397-A:14-a and include the

disclosure "Licensed by the New Hampshire banking department," as required by RSA 397-A:14-a,III.

- f. Pursuant to RSA 397-A:16,I, Respondents shall timely provide Good Faith Estimates to Network Capital's New Hampshire consumers;
- g. Pursuant to RSA 397-A:2,III and the Equal Credit Opportunity Act, Respondents shall timely provide Adverse Action requests letters to New Hampshire consumers;
- h. Network Capital shall reimburse Consumers 1 through 55 the fees charged as described in Paragraph 6 above, payable contemporaneously with the effective date of this Consent Order, which is upon the Commissioner's signature. These consumer checks shall be bank check or guaranteed funds and made payable to each individual consumer and submitted directly to each consumer via first class mail by Network Capital.

(1). Each check shall be accompanied by written correspondence containing only the following language: "This refund check is being sent to you pursuant to a public consent order that Network Capital Funding Corporation and other persons entered into with the New Hampshire

Banking Department. You may find a copy of the public consent order on the Banking Department's website at www.nh.gov/banking/orders/enforcement/index.htm by searching for Docket #11-170. For further questions, please contact the New Hampshire Banking Department at (603) 271-3561;"

(2). Any verbal communications with consumers about the restitution shall be limited to the language found in the written correspondence, and Network Capital shall refer the consumer to the Department for further information;

(3). Network Capital shall also forward to the Department copies of all cancelled checks or copies of cancelled check images. Such images may be forward in batches on a monthly basis by Network Capital;

(4). Network Capital shall make a second attempt to locate the consumer, if the address to which the restitution check is mailed is no longer valid. Such attempt shall be documented and reported to the Department;

(5). Network Capital shall follow up at least once with any consumer who does not cash the

check within three months of receipt. Such follow up shall be documented and reported to the Department; and

(6). If, after six months, a consumer has failed to cash or deposit the restitution check, Network Capital shall begin the process to escheat the funds to the New Hampshire State Treasurer's Abandoned Property division. Such process shall be documented and reported to the Department. The process of escheatment may begin prior to six months, if so approved or directed by the Department;

i. Network Capital shall pay to the Department \$82,500.00 in administrative penalties, payable contemporaneously with Respondents' signing of this Consent Order. The check shall be bank check or guaranteed funds and made payable to "State of New Hampshire."

19. This Consent Order may be revoked as to any Respondent and the Department may pursue any and all remedies available under law against such Respondent, if the Department later finds that such Respondent knowingly or willfully withheld information used and relied upon in this Consent Order.

20. This Consent Order is binding on all heirs, assigns, and/or successors in interest.
21. This Consent Order shall become effective upon the date the Commissioner signs this Consent Order, providing the Department has confirmed the receipt of payments referenced in Paragraphs 18.h. and 18.i. herein.
22. Once this Consent Order is effective, the Department agrees not to seek further reimbursement, refunds, penalties, fines, costs, or fees regarding the facts or allegations of violations contained herein.
23. For any person or entity not a party to this Consent Order, this Consent Order does not create any private rights or remedies against the Respondents, create any liability for the Respondents or limit defenses of Respondents to any claims.

WHEREFORE, based on the foregoing, we have set our hands to this Consent Order, effective upon its execution by Ronald A. Wilbur, Bank Commissioner.

Recommended this 23rd day of October, 2012 by

_____/s/_____
Maryam Torben Desfosses,
Hearings Examiner, Banking Department

Executed this 31st day of October, 2012 by

_____/s/_____

W. John Funk, Esq., on behalf of Network Capital Funding Corporation and Tri Minh Nguyen

SO ORDERED.

_____/s/_____
Ronald A. Wilbur,
Bank Commissioner

Dated: 11/1/12