

**State of New Hampshire
Banking Department**

In re:)	Case No.: 12-492
)	
American Trust Mortgage, Inc., Paul J.)	
)	
Mignone as President of American Trust)	Consent Order
)	
Mortgage, Inc., Stephanie R. Sullivan as a)	
)	
Minority Shareholder of American Trust)	
)	
Mortgage, Inc., and James Tracy as)	
)	
Director of Operations of American Trust)	
)	
Mortgage, Inc.,)	
)	
Respondents.)	

The State of New Hampshire Banking Department and the Bank Commissioner acting in agreement with the respondents, American Trust Mortgage, Inc. (“American Trust”), Paul J. Mignone as President of American Trust Mortgage, Inc., Stephanie R. Sullivan as a Minority Shareholder of American Trust Mortgage, Inc., and James Tracy as Director of Operations of American Trust Mortgage, Inc., find and order as follows.

JURISDICTION

The Department licenses and regulates “persons that offer, originate, make, fund, or broker a mortgage loan . . . secured by real property located in the state of New Hampshire.” RSA 397-A:2, II. The Bank Commissioner may issue such orders “as are reasonably necessary to carry out the provisions of [RSA Chapter 397-A].” RSA 397-A:20, IV. All actions taken by the Bank Commissioner “shall be taken only when the commissioner finds such action necessary or appropriate to the public interest or for the protection of consumers and consistent with the purposes fairly intended by the policy and provisions of [RSA Chapter 397-A].” RSA 397-A:20, VI.

RESPONDENTS

1. American Trust is corporation duly incorporated in the Commonwealth of Massachusetts on March 7, 2003 and a principal office of 324 Essex Street, Swampscott, MA 01901. American Trust holds a New Hampshire mortgage broker license from the Department.
2. Mr. Mignone is the President and majority shareholder of American Trust. Mr. Mignone is presumed to control American Trust in that he “has the right to vote 10 percent or more of a class of a voting security or membership interest, or has the power to sell or direct the sale of 10 percent or more of a class of voting securities or membership interest.” RSA 397-A:1, V-a(b).
3. Mr. Tracy is the Director of Operations of American Trust. Mr. Tracy is presumed to control American Trust in that he is a director or executive officer of American Trust. RSA 397-A:1, V-a(a).
4. Ms. Sullivan is a Minority Shareholder of American Trust. Ms. Sullivan is presumed to control American Trust in that she owns 10 percent or more of the outstanding common shares of American Trust. See RSA 397-A:1, V-a(b).

BACKGROUND

On December 3, 2012, the Department commenced a routine examination of American Trust as required by statute. During the course of the examination, the Department’s examiner, [REDACTED], requested a loan list from American Trust. The loan list disclosed that Mr. Mignone acted as the loan originator on at least six loans secured by real property in New Hampshire during a period from January 1, 2010 until March 13, 2012 when Mr. Mignone did not hold a New Hampshire loan originator license. American Trust was unable to produce copies of five of these loan files for

Examiner [REDACTED] to review. When asked for an explanation for the failure to produce these files, Mr. Mignone stated:

Although, each file was active at the time it was designated active in the loan origination system, for different reasons, none of these loan files remained active as of the time of [Examiner [REDACTED]'s] review. My staff failed to update the loan origination system reflecting the inactive file status – withdrawn, etc.

Additionally, during the course of the examination, on or about December 4, 2012, Examiner [REDACTED] discovered several sets of documents in and around American Trust's shred bins. Examiner [REDACTED] discovered one set of documents related to Consumer A consisting of:

1. Two small pieces of paper with photocopies of the signature of [REDACTED] [REDACTED] CPA. Mr. [REDACTED]'s signature appears larger on one piece of paper than the other.
2. A typed letter appearing on letterhead for [REDACTED] Certified Public Accountants, dated November 10, 2010 with the signature cut out of it (the "November 10, 2010 letter"). The November 10, 2010 letter explains, in relevant part, that Consumer A has full authority to use and withdraw funds of \$100,000 from his business.
3. A copy of the November 10, 2010 letter with a revised version of the text dated November 20, 2012 taped over the body of the November 10, 2010 letter (the "altered letter"). The revised text does not include that Consumer A can use and withdraw up to \$100,000 from his business.
4. A photocopy of the altered letter with a small piece of paper with a shrunken photocopy of Mr. [REDACTED]'s signature taped in the signature line (the "altered [REDACTED] letter").

Examiner [REDACTED] discovered a second set of documents related to Consumer B consisting of:

1. A letter appearing on [REDACTED] Insurance letterhead dated November 19, 2012 signed by [REDACTED], payroll administrator (the “November 19, 2012 letter”), stating in relevant part:

The VIP Plan earnings amount on your paystub is not standard salary but rather a one-time annual payment based on company performance. Although you are eligible for the VIP Plan, it is not guaranteed that a bonus will be received. The Payroll Department is not permitted to comment on probability of future VIP Plan earnings.

2. A copy of the November 19, 2012 letter with the [REDACTED] Insurance letterhead and Ms. [REDACTED]’s signature cut out of it.
3. A revised version of the November 19, 2012 letter with the [REDACTED] Insurance letterhead and Ms. [REDACTED]’s signature taped onto it (the “revised [REDACTED] letter”). The revised [REDACTED] letter states the following language in place of the above-referenced language from the November 19, 2012 letter:

The VIP Plan earnings amount on your paystub is not standard salary buy [sic] rather a one-time annual payment based on company performance. You are eligible for the VIP Plan and this bonus is likely to continue.

Subsequently, Examiner [REDACTED] requested complete copies loan files for Consumers A and B from Mr. Tracy. Mr. Tracy provided Examiner [REDACTED] the in-process files as they existed in the office at that time. Examiner [REDACTED] observed that the in-process files did not contain the documents located in the shred bins. The in-process file for Consumer A indicated that Consumer A’s loan application was being sent to a lender named [REDACTED] LLC (“MS”). The in-process file for Consumer B

indicated that Consumer B's loan application was being sent to a lender named [REDACTED], Inc. ("AFR").

On or about December 6, 2012, Examiner [REDACTED] requested copies of the complete loan files for Consumer A and Consumer B from American Trust. On or about December 12, 2012, Examiner [REDACTED] requested copies of the files for Consumer A and Consumer B from the lenders. AFR provided Consumer B's file on December 13, 2012. American Trust delivered copies of its files on December 13, 2012. MS provided Consumer A's file on December 14, 2012.

Upon review of MS's file for Consumer A, Examiner [REDACTED] learned that the respondents had submitted a photocopy of the altered [REDACTED] letter to MS. The file also indicated that Consumer A's loan was conditionally approved by MS and the loan had not closed as of the date of this Order.

Upon review of AFR's file for Consumer B, Examiner [REDACTED] discovered that the respondents had submitted a photocopy of the revised [REDACTED] letter to AFR. The file also indicated that AFR conditionally approved Consumer B's loan and the loan closed on December 3, 2012.

Examiner [REDACTED] also learned that Consumer B's loan application was originally submitted to another lender, [REDACTED], Inc. ("[REDACTED]"), but was withdrawn from [REDACTED] prior to being submitted to AFR. Subsequently, Examiner [REDACTED] requested [REDACTED]'s file on Consumer B and that file arrived at the Department on December 13, 2012. The file demonstrated that prior to the application being withdrawn, [REDACTED] approved Consumer B's loan with conditions. One of the conditions was that Consumer B had to:

[o]btain a full/written [verification of employment] from [REDACTED]
[with a] full break down of all pay for last 2 years including VIP Plan to
determine if can be used in qualifying. Employer must be able to confirm
VIP Plan pay continuance to use in qualifying.

This type of condition is standard for a Federal Housing Authority (“FHA”) 30 year mortgage loan. See U.S. DEP’T OF HOUSING & URBAN DEV., HANDBOOK: MORTGAGE CREDIT ANALYSIS FOR MORTGAGE INSURANCE ON ONE-TO FOUR-UNIT MORTGAGE LOANS, § 4155.1 (“If the employment verification states that the overtime and bonus income is unlikely to continue, it may not be used in qualifying.”). Neither the November 19, 2012 letter nor the revised letter was submitted to [REDACTED] for consideration.

Subsequently, Examiner [REDACTED] obtained email correspondence between Justin Burgess, the loan originator for Consumer B’s file, and his contact at AFR dated November 20, 2012. In the email, the contact at AFR told Mr. Burgess that in order to approve Consumer B’s loan, AFR would “need either a letter from [REDACTED] confirming [that the] Bonus will continue, or [Consumer B] has to pay off and close [her] account with [REDACTED] [REDACTED].” Mr. Burgess told his contact at AFR that he would get Consumer B to pay off the account with [REDACTED]. However, the credit report associated with Consumer B’s loan application indicates that the account at [REDACTED] was not paid off.

The Department shared the results of Examiner [REDACTED]’s exam with the respondents. Upon learning of the matter, the respondents fully cooperated with the Department’s investigation. Additionally, the respondents took affirmative steps to investigate the above-referenced allegations and took disciplinary action against the individuals involved. Subsequently, the Department and the respondents entered into

negotiations to settle this matter amicably with the cooperation of all parties. The Department and the respondents reached the following resolution of this matter with regard to the respondents.

LAW AND APPLICATION

I. Mr. Mignone acted as a mortgage originator without the required license.

Under RSA 397-A:3, I, it is “unlawful for any person . . . to act as a . . . mortgage originator in its, his, or her name or on behalf of another person without first obtaining and maintaining annually a license” with the Department. A “mortgage originator” “means an individual who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain, take a mortgage application or offers, negotiates, solicits, arranges, or finds a mortgage loan or who offers or negotiates the terms of a residential mortgage loan.” RSA 397-A:1, XVII(a).

The Department takes the position that Mr. Mignone acted as a mortgage originator between January 1, 2010 until March 13, 2012 without a license from the Department. The evidence obtained by the Department indicates that Mr. Mignone took mortgage loan applications or offered, negotiated, or found mortgage loans secured by property located in New Hampshire between January 1, 2010 and March 13, 2012.

II. American Trust employed, retained, or otherwise engaged an unlicensed originator.

Under RSA 397-A:3, III, it is “unlawful for any . . . mortgage broker to employ, retain, or otherwise engage an originator unless the originator is licensed.”

The Department takes the position that American Trust violated RSA 397-A:3, III by employing, retaining, or otherwise engaging Mr. Mignone to act as a mortgage originator when he was not licensed as a mortgage originator with the Department.

III. American Trust engaged in unfair, deceptive, unethical, or fraudulent business practices.

“No person subject to [RSA Chapter 397-A] shall . . . engage in unfair, deceptive, unethical, or fraudulent business practices.” RSA 397-A:14, IV(n). To be unfair or deceptive, conduct must rise “to ‘a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce.’” Hair Excitement, Inc. v. L’Oreal U.S.A., Inc., 158 N.H. 363 (2009) (quoting ACAS Acquisitions v. Hobert, 155 N.H. 381, 402 (2007)).

The Department takes the position that American Trust engaged in unfair, deceptive, unethical, or fraudulent business practices when its employees manipulated and altered documents associated with loan applications for Consumer A and Consumer B. Cutting and pasting signatures of third parties and otherwise altering the content of letters verifying employment and income information would raise the eyebrow of someone inured to the rough and tumble world of commerce.

IV. The respondents failed to supervise their agents, originators, managers, and employees.

Persons subject to RSA Chapter 397-A are required to supervise their agents, originators, managers, and employees. RSA 397-A:17, I(g).

The Department takes the position that the respondents violated RSA 397-A:17, I(g) when they failed to supervise their agents, originators, managers, and employees. The documents found in and around the shred bins indicate that the respondents’ agents, originators, managers, and employees were unfairly and deceptively altering and manipulating documents and submitting those documents to lenders. The respondents

had a duty to supervise their agents, originators, managers, and employees to prevent this conduct. The respondents failed to carry out this duty.

CONSENT AND ACKNOWLEDGMENTS

1. The respondents have voluntarily entered into this Consent Order without reliance upon any discussions between the Department and the respondents, without the promise of a benefit of any kind (other than the concessions contained in this Consent Order), and without threats, force, intimidation, or coercion of any kind.
2. The respondents acknowledge their understanding of the nature of the allegations set forth in this proceeding, including the potential penalties provided by law.
3. The respondents acknowledge, understand, and agree that they have a right to notice, hearing, civil action, and/or appeal related to this Consent Order, and hereby waive those rights.
4. The respondents represent and warrant that they have all the necessary rights, powers, and abilities to carry out all of the terms of this Consent Order that are applicable to the respondents.
5. The respondents acknowledge that the Department is relying upon the respondents' representations and warranties stated herein in making its determinations in this matter.

ORDER

Pursuant to RSA 397-A:20, the Commissioner finds this Consent Order reasonably necessary to carry out the provisions of RSA Chapter 397-A. Accordingly, the Commissioner orders as follows:

1. The respondents shall immediately place with one or more qualified broker(s) or lender(s), as appropriate based on the status of the application and with no loss to applicants, all of their pending New Hampshire residential mortgage loan applications. The respondents shall obtain the approval of the Bank Commissioner before placing such applications to the qualified broker(s) or lender(s).
2. The respondents shall submit to the Department a detailed record, prepared as of the date of submission, of all of the respondents' pending residential mortgage loan applications related to property located in New Hampshire.
3. The respondents shall immediately secure all pending residential mortgage loan application files and, to the extent that any original documents must be forwarded to the relevant mortgage lender(s) or mortgage broker(s) pursuant to paragraph 1 of this Order, a copy of such document, correspondence, or paper relating to the mortgage loan shall be retained in the respondents' books and records and shall be available to the Department in its entirety upon request.
4. American Trust's New Hampshire Broker Licenses are hereby revoked. RSA 397-A:17, I.
5. Paul J. Mignone shall surrender his New Hampshire Mortgage Loan Originator License. Mr. Mignone agrees to never apply for any license with the Department in the future.
6. Stephanie R. Sullivan shall surrender her New Hampshire Mortgage Loan Originator License.
7. James Tracy agrees to never apply for any license with the Department in the future.

8. The respondents shall pay the Department an administrative penalty of \$10,000, payable to the "State of New Hampshire" by bank check or guaranteed funds. RSA 397-A:21, IV.
9. Any and all renewal applications submitted by American Trust and Mr. Mignone for licensure with the Department are hereby denied. The fees associated with these license renewals shall be retained by the Department and applied to the administrative penalty in this Order.
10. Ms. Sullivan must withdraw any and all renewal applications for her individual licensure with the Department. The fees associated with these license renewals shall be retained by the Department and applied to the administrative penalty in this Order.
11. The respondents shall disgorge any and all commissions associated with the six loan files requested by Examiner [REDACTED], Consumer A's mortgage loan file, and Consumer B's mortgage loan file.
12. The respondents shall pay the examination fee and any other costs and fees associated with the Department's investigation of this matter.
13. If the Department finds that the respondents knowingly or willfully withheld information used and relied upon in this Consent Order, the Department may revoke this Consent Order and pursue any and all remedies available under law.
14. This Consent Order is binding on all heirs, assigns, and/or successors in interest.

Recommended by:

12/27/12
Date

/s/
Emelia A.S. Galdieri
Hearings Examiner
State of New Hampshire Banking Department
N.H. Bar #19840

Executed by:

12/26/12
Date

/s/
Representative of American Trust Mortgage, Inc.

12/26/12
Date

/s/
Paul J. Mignone
President, American Trust Mortgage, Inc.

12/26/12
Date

/s/
Stephanie R. Sullivan
Minority Shareholder
American Trust Mortgage, Inc.

12/27/12
Date

/s/
James Tracy
Director of Operations
American Trust Mortgage, Inc.

SO ORDERED.

12/27/12
Date

/s/
Ronald A. Wilbur
Bank Commissioner
State of New Hampshire Banking Department