

**State of New Hampshire
Banking Department**

In re:)	Case No.: 13-001
)	
Justin M. Burgess,)	
)	Consent Order
Respondent.)	
)	
)	
)	

The State of New Hampshire Banking Department and the Bank Commissioner acting in agreement with the respondent, Justin Burgess, 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.

RESPONDENT

Mr. Burgess is an individual residing in the Commonwealth of Massachusetts. He was employed as a loan originator by American Trust Mortgage, Inc. (“American Trust”). He held a New Hampshire loan originator license from the Department until December 27, 2012 when the Department revoked American Trust’s mortgage broker license. In re: American Trust Mortgage, Inc., et al., No. 12-492 (N.H. Banking Dep’t Dec. 27, 2012) (Consent Order).

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 requested a loan list from American Trust. The loan list disclosed that Mr. Burgess acted as the loan originator for two individuals owning real property in New Hampshire, Consumer A and Consumer B, as well as several other New Hampshire consumers.

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

- 1) Two small pieces of paper with photocopies of the signature of [REDACTED], CPA (the "CPA"). The CPA's signature appears larger on one piece of paper than the other.
- 2) A typed letter appearing on letterhead for the CPA, 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 the CPA's signature taped in the signature line (the "altered CPA letter").

The examiner discovered a second set of documents related to Consumer B consisting of:

- 1) A letter appearing on [REDACTED] (“LM”) letterhead dated November 19, 2012 signed by [REDACTED] (“AW”), 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 LM’s letterhead and AW’s signature cut out of it.
- 3) A revised version of the November 19, 2012 letter with LM’s letterhead and AW’s signature taped onto it (the “revised LM letter”). The revised LM 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.

The examiner obtained the in-process files for Consumer A and Consumer B. The in-process file for Consumer A indicated that Consumer A’s loan application was being sent to a lender named [REDACTED] (“MS”). The in-process file for Consumer B indicated that Consumer B’s loan application was being sent to a lender named [REDACTED] (“AFR”).

The examiner also obtained a copy of MS’s file for Consumer A and AFR’s file for Consumer B. These files contained loan applications which confirmed that Mr.

Burgess acted as the loan originator for both consumers. Upon review of MS's file for Consumer A, the examiner learned that a photocopy of the altered CPA letter was submitted to MS. The file also indicated that Consumer A's loan was conditionally approved by MS.

Upon review of AFR's file for Consumer B, the examiner discovered that, a photocopy of the revised LM letter was submitted to AFR. The file also indicated that AFR conditionally approved Consumer B's loan and the loan closed on December 3, 2012.

The examiner also learned that Consumer B's loan application was originally submitted to another lender, [REDACTED] ("CF"), but was withdrawn from CF prior to being submitted to AFR. Accordingly, the examiner requested CF's file on Consumer B. CF's file demonstrated that prior to the application being withdrawn, CF approved Consumer B's loan with conditions. One of these conditions was that Consumer B had to:

[o]btain a full/written [verification of employment] from [LM] [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 CF for consideration.

On or about December 17, 2012, the examiner obtained access to Mr. Burgess' computer. The examiner reviewed email correspondence between Mr. Burgess 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 [LM] confirming [that the] Bonus will continue, or [Consumer B] has to pay off and close [her] account with [REDACTED] ("KJ")." Mr. Burgess told his contact at AFR that he would get Consumer B to pay off the account with KJ. However, the credit report associated with Consumer B's loan application indicates that the account at KJ was not paid off. The FHA Loan Approval for Consumer B indicates that the condition associated with the KJ account was satisfied on November 27, 2012.

Additionally, on Mr. Burgess' computer, the examiner located a digital copy of the November 19, 2012 letter. According to emails on Mr. Burgess' computer, Consumer B had forwarded this digital copy from LM to Mr. Burgess on November 19, 2012.

Subsequently, on January 17, 2013, the Department issued an Order to Show Cause against Mr. Burgess outlining the above-referenced facts. Mr. Burgess' legal counsel contacted the Department and expressed Mr. Burgess' desire to cooperate fully with the Department. Consequently, the Department and Mr. Burgess entered into negotiations to settle this matter amicably with the cooperation of all parties. The Department and Mr. Burgess reached the following resolution of this matter.

LAW AND APPLICATION

Under RSA 397-A:14, IV(n), no person subject to RSA Ch. 397-A shall "[e]ngage in unfair, deceptive, unethical, or fraudulent business practices." 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)). Fraud occurs where one makes a misrepresentation “with knowledge of its falsity or with conscious indifference to its truth” for the purpose of inducing another to act or to refrain from action in reliance upon it. Tessier v. Rockefeller, et al., 162 N.H. 324, 331-32 (2011)

The Department takes the position that Mr. Burgess engaged in unfair, deceptive, unethical, or fraudulent business practices. Cutting and pasting signatures of third parties and otherwise altering the content of letters verifying employment and income information and submitting these documents to lenders would raise the eyebrow of someone inured to the rough and tumble world of commerce. The evidence demonstrates that Mr. Burgess was responsible for the files in his capacity as loan originator. Additionally, the evidence indicated that the altered documents operated as misrepresentations of material facts about loan documents. These misrepresentations were made with the intent to induce lenders to fund loans for Consumer A and Consumer B and did induce a lender to fund a loan for Consumers B. Thus, Mr. Burgess violated RSA 397-A:14, IV(n).

CONSENT AND ACKNOWLEDGMENTS

1. On this same date, the Department will move to vacate the Order to Show Cause against Mr. Burgess.
2. Mr. Burgess has voluntarily entered into this Consent Order without reliance upon any discussions between the Department and Mr. Burgess, 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.
3. Mr. Burgess acknowledges his understanding of the nature of the allegations set forth in this proceeding, including the potential penalties provided by law.
 4. Mr. Burgess acknowledges, understands, and agrees that he has a right to notice, hearing, civil action, and/or appeal related to this Consent Order, and hereby waives those rights.
 5. Mr. Burgess represents and warrants that he has all the necessary rights, powers, and abilities to carry out all the terms of this Consent Order that are applicable to him.
 6. Mr. Burgess acknowledges that the Department is relying upon Mr. Burgess' representations and warranties stated herein in making its determinations in this matter.

ORDER

Pursuant to RSA 397-A:20, VI, the Commissioner finds this Consent Order necessary or appropriate to the public interest, for the protection of consumers, and consistent with the purposes fairly intended by the policy and provisions of RSA Ch. 397-A. Accordingly, the Commissioner orders as follows:

1. Mr. Burgess shall withdraw his pending application for a New Hampshire mortgage loan originator license.
2. Mr. Burgess shall pay an administrative fine of \$5,000 to the Department for violations of RSA 397-A:14, IV(n) with regard to Consumer A and Consumer B. RSA 397-A:21, IV. This administrative fine shall be paid as follows:

- a. The fee associated with Mr. Burgess' pending application for a New Hampshire mortgage loan originator license shall be retained by the Department and applied to the administrative fine.
 - b. Mr. Burgess shall make a payment of \$100.00 to the Department payable at the time he signs this Consent Order.
 - c. Mr. Burgess shall make twelve (12) installment payments of \$100.00 no later than the first day of each month commencing May 1, 2013.
 - d. Mr. Burgess shall make twelve (12) installment payments of \$300.00 no later than the first day of each month commencing May 1, 2014.
3. This Consent Order shall become effective upon the date the Commissioner of the Banking Department signs this Consent Order, provided that the Department has confirmed receipt of payments referenced in Paragraph 2(b).
 4. Mr. Burgess shall not be employed, hold office, or otherwise conduct business under RSA Ch. 397-A including acting in any capacity as a regulated individual under RSA Ch. 397-A.. RSA 397-A:17, II(e).

Recommended by:

04/05/13
Date

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

Executed by:

04/02/13
Date

/s/
Justin M. Burgess

SO ORDERED.

04/08/13
Date

/s/
Glenn A. Perlow
Deputy Bank Commissioner
State of New Hampshire Banking Department