

State of New Hampshire Banking Department

In re the Matter of:) Case No.: 13-109
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State of New Hampshire Banking)
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Department,) Notice of Hearing
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Petitioner,)
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and)
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The Mortgage Specialists, Inc. and Michael)
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Gill,)
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Respondents)
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NOTICE OF HEARING

1. The Department issued to the above named Respondents an Order to Show Cause and to Produce Records on April 11, 2013. The Bank Commissioner ordered a hearing to be held on May 15, 2013. On May 2, 2013 Presiding Officer Stephen Judge recused himself as presiding officer over this matter. The Department filed a Motion to Stay Hearing on May 3, 2013. On May 3, 2013, Bank Commissioner Perlow ordered the April 11, 2013 order stayed to the extent of ordering an alternative presiding officer to hold a hearing within the thirty (30) day default period. The Bank Commissioner ordered that the new presiding officer, once appointed, “shall issue a written scheduling order stating time, date and place of the postponed hearing as soon as practicable.” Bank Commissioner Perlow delegated Presiding Officer Andrew B. Eills on June 14, 2013, effective as of June 5, 2013.

2. On June 18, 2013 the Department filed a Motion for Pre-Hearing Conference and Adjudicative Hearing.

3. On July 11, 2013 Presiding Officer Eills issued a Notice of Prehearing Conference setting the prehearing conference for July 24, 2013, to be held at the Department to address the issues pursuant to NH RSA 541-A:31 and to determine a date for the adjudicative hearing. Due to a conflict by Respondents, an Assented to Motion to Continue Prehearing Conference was filed July 18, 2013. On July 19, Presiding Officer Eills issued an Amended Notice of Prehearing Conference setting the prehearing conference for July 25, 2013 at 2 p.m.

4. The prehearing conference commenced at 2 p.m. Pursuant to RSA 541-A: 31, the following were addressed:

a. The Department proposed a settlement prior to the prehearing conference which was not accepted by Respondents.

b. The parties agreed that the issues are as follows: 1.the Respondents failed to surrender emails during an exam conducted pursuant to RSA 397-A: 11, et seq. and RSA 397-A: 12, et seq.; 2. the Respondents failed to facilitate an exam conducted pursuant to RSA 397-A: 12, III and VII; and, 3. Respondents failed to keep records accessible pursuant to RSA 397-A: 11 and RSA 397-A: 12.

c. A stipulation or admissions to issues of fact or proof by consent of the parties is ongoing and if reached, shall be submitted to the Presiding Officer.

d. The Department expects to call no more than five (5) witnesses; Respondents expect to call three (3) or more witnesses plus name a list of department examiners from 2007 to present as supplied by the Department.

e. There were no changes to standard procedures, consolidation of witnesses or other matters to aid in the disposition of the hearing.

f. A full day will be required for the hearing which will be held Tuesday, August 20, 2013 commencing at 9:30 a.m. at the Department. Witness and exhibits lists shall be filed by the end of Department office hours on August 13, 2013.

IT IS HEREBY ORDERED that:

5. Respondents shall appear before the New Hampshire Banking Department on Tuesday, August 20, 2013 at 9:30 a.m., at the New Hampshire Banking Department located at 53 Regional Drive, Suite 200, Concord, New Hampshire 03301, for the purpose of participating in an adjudicative proceeding, at which time the Petitioner will have the burden to prove by preponderance of the evidence why the relief sought in the Order to Show Cause and Produce Records should be approved.

6. Pursuant to RSA 541-A: 31, III (b), the legal authorities under which the hearing is to be held are: RSA 541-A: 30, III, RSA 397-A: 11, RSA 397-A: 12, and RSA 397-A: 17, and RSA 397-A: 18.

7. The facts as alleged in the Petition to Show Cause and Produce Records are herein incorporated by reference.

8. Proposed exhibits shall be pre-marked, for identification only, and filed with the Department and provided to the opposing party by August 13, 2013. The Department's exhibits shall be pre-marked with Arabic numbers. The Respondents exhibits shall be pre-marked with capital letters. An index/list of exhibits providing a brief description of each exhibit with its corresponding pre-marked number or letter shall be filed by both parties simultaneous with the filing of exhibits.

9. The parties shall exchange a list of all exhibits and witnesses to be called at the hearing

with a brief summary at the hearing, and shall at the same time file a copy of their respective lists with the Presiding Officer.

10. All periods referenced in this notice shall be calendar days. If the last day of the period so computed falls on a Saturday, Sunday, or legal holiday, then the time period shall be extended to include the first business day that is not a Saturday, Sunday, or legal holiday.

11. The Department shall have the burden of setting forth a *prima facie* case, and then the Respondents shall have the burden of showing compliance with applicable law by a preponderance of the evidence.

12. Any Respondent's failure to appear at the time, date, and place specified may result in the hearing being held *in absentia* and/or default ruling in favor of the Department, without further notice or opportunity to be heard.

13. The entirety of all verbal proceedings shall be recorded verbatim by the Department. Upon request of any party, or upon the Presiding Officer's own initiative, such record shall be transcribed by a certified court reporter designated by the Presiding Officer, and that all costs shall be borne solely by the requesting party.

14. Each party has the right to have the Department provide a certified shorthand court reporter at the requesting party's expense. Any such request shall be submitted in writing to the Presiding Officer at least 10 days prior to the hearing.

15. All documents shall be filed with the Presiding Officer in the form of an original and one (1) copy and shall bear a certification that a copy is also being delivered to the Hearings Examiner and any other parties to this matter in accordance with applicable laws. All documents shall be filed by mailing or delivering them to the New Hampshire Banking Department, ATTN: Presiding Officer 13-109, 53 Regional Drive, Suite 200, Concord, NH 03301. Filing by facsimile or electronic transmission shall not be accepted.

