



# State of New Hampshire

## Banking Department

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GLENN A. PERLOW  
BANK COMMISSIONER

INGRID E. WHITE  
DEPUTY BANK COMMISSIONER

In re- James S. Kudalis

Case No. 13-413

The Hearing Officer in the above reference matter has submitted the attached Proposed Final Order. The Proposed Final Order is hereby adopted as my Final Order.

5/21/15  
Date

  
\_\_\_\_\_  
Glenn A. Perlow

In re James S. Kudalis

Case No. 13-413

### PROPOSED FINAL ORDER

On December 12, 2014, the New Hampshire Banking Department (the "Department") and the Bank Commissioner brought an adjudicative proceeding against the respondent, James S. Kudalis, requiring that Mr. Kudalis show cause why he should not have his loan originator license revoked and pay an administrative fine in the amount of \$2,500 for knowingly or negligently violating RSA 397-A:14, IV(n).

Upon review of the evidence submitted by the Department and Mr. Kudalis, I find that Mr. Kudalis failed to show cause why he should not have his loan originator license revoked and pay an administrative fine in the amount of \$2,500 for knowingly violating RSA 397-A:14, IV(n) *See* RSA 397-A:17, I (k). Accordingly, the undersigned Presiding Officer recommends that the Bank Commissioner revoke Mr. Kudalis's license and order Mr. Kudalis to pay an administrative fine in the amount of \$2,500. RSA 397-A:21, IV.

### JURISDICTION

The Department licenses and regulates "persons that offer, originate, make, fund, or broker a mortgage loan from the state of New Hampshire or a mortgage loan secured by real property located in the state of New Hampshire." RSA 397-A:2, I. The Bank Commissioner "may issue an order requiring a person to whom any license has been granted . . . to show cause why the license should not be revoked or suspended, or penalties imposed, or both, for violations of this chapter." RSA 397-A:17, I. The Bank Commissioner delegated his authority to the undersigned Presiding Officer to: (1) "schedule and hold Adjudicative Hearings for the Banking

Department”; (2) “schedule and hold pre-hearing conferences related to Adjudicative Hearings”; (3) “issue decisions on non-dispositive motions that arise in Adjudicative Hearings”; and (4) “submit to the Commissioner proposed decisions on the Adjudicative Hearings and any dispositive motions, which shall include: (i) Statement of issues presented; (ii) Summaries of evidence received; (iii) Proposed findings of fact and rulings of law; and (iv) Proposed orders.” (N.H. Banking Dep’t Order Re: Amend. to Delegation to Hearings Officer, June 17, 2014.)

### FACTS

On August 20, 2013, the Department received a consumer complaint against Mr. Kudalis and Schaefer Mortgage Corporation (“Schaefer”), the mortgage company which employed Mr. Kudalis. (Ex. 1; Ex. 4.) Schaefer is licensed by the Department as a mortgage banker. (Ex. 3.) At the time, Mr. Kudalis was licensed by the Department as a loan originator. (Ex. 4.) The complaint focused on issues surrounding an interest rate lock and referenced text message which the consumer planned to submit at a later date. (Ex. 1.)

On September 19, 2013, the Department received an updated complaint from the consumer which included copies of text messages exchanged between Mr. Kudalis and the consumer. (Ex. 2.) The text messages included the following statements by Mr. Kudalis:

May 28, 2013

Mr. Kudalis:

Damn reserves requirement (new guideline as of 4/1/13 for “owner-occupied” 2-4 family dwellings. (killing a bunch of our refi’s... I checked the guides with my processor and reserves can come from the sale of personal property... My thought is that if you were to borrow \$8k from someone.. (for like 1 week) we could drum up a bill of sale for something..(like a work trailer, or tools) .. Deposit it into your checking, print the statement for underwriting, then return the \$\$ after you close...May not have to be that much if we time bank account when there’s max cash of your own...And also use the \$1200 you haves[sic] in 401k.

June 4, 2013

Mr. Kudalis: Can I meet you at the outlets tomorrow morning for the statements etc.? I'll have the Bill of sale typed up too....

June 17, 2013

Mr. Kudalis: Should I make your brother the buyer of the tools... or do you want to leave him out and use a different name? They don't check on it...But just want to make sure with you.. Forgot to ask you bout[sic] that... Thanks..

June 18, 2013

Mr. Kudalis: U/W is still working on your file.... I have the bill o[sic] sale for you to sign...

July 8, 2013

Mr. Kudalis: [The underwriter manager] is going through the guides now for exception on reserves.. (I explained to Ken that the original delay was due to the required 6 months reserves, and that you had to sell some tools).

(Ex. 6; Ex. 7; Ex. 8; Ex. 9; Ex. 10.)

The Department forwarded the complaint and text messages to Schaefer seeking further information. Upon review of the complaint and text messages, Schaefer provided a letter from counsel with supporting documentation establishing that on April 12, 2013, Mr. Kudalis reviewed the consumer's loan application and determined that the consumer was required to provide six months of payment reserves. (Ex. 12 at 5.) A loan processor at Schaefer confirmed this requirement on May 9, 2013 and notified Mr. Kudalis. Id. On May 14, 2013,<sup>1</sup> the loan processor sent the consumer a notice requesting evidence of six months reserves, totaling approximately \$7,578. Id.

The documents from Schaefer's counsel further established that Mr. Kudalis notified Schaefer that the consumer would be selling personal tools in order to acquire the required reserves. Id. Schaefer's records showed that on June 5, 2013, the consumer submitted a bank

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<sup>1</sup> The Order to Show Cause contains a typographical error listing this date as May 13, 2013 instead of May 14, 2013. See N.H. Banking Dept's Ex. 12 at 5.

statement to underwriting showing a \$5,100 deposit on June 3, 2013. Id. When Schaefer underwriters indicated that more support for the deposit was necessary, the consumer submitted a “Bill of Sale” for “Misc. Construction Tools.” (Ex. 12 at 5.) Schaefer’s counsel established that the underwriters rejected the bill of sale because there was no way to establish ownership of the tools that the consumer had sold and the bill of sale was not submitted to a lender. (Id.; Ex. 13 at 1.)

Following receipt of the complaint and text messages, Schaefer terminated Mr. Kudalis’s employment on September 26, 2013. (Ex. 13 at 1.)

In August 2014, the Department entered into negotiations with Mr. Kudalis to attempt to resolve this matter without the need for a hearing. Those negotiations were unsuccessful, however, and the Deputy Commissioner filed an Order to Show Cause on December 12, 2014 alleging a violation of RSA 397-A:14, (IV) (n) engaging in a dishonest or unethical business practice. Mr. Kudalis failed to timely request a hearing on the Order to Show Cause and the Deputy Commissioner entered a default judgment against Mr. Kudalis on January 21, 2015.

On January 23, 2015, Mr. Kudalis contacted the Department and requested that the Department resume negotiations with him. The Deputy Commissioner agreed to remove the Default Judgment and allow Mr. Kudalis to request a hearing in this matter. While the hearing was being scheduled, the Department and Mr. Kudalis attempted to negotiate a resolution to this matter, but the negotiations were again unsuccessful. The hearing on the Order to Show Cause was held on March 9, 2015.

#### RECOMMENDATION

RSA 397-A:17, I places the burden on a licensee to show cause why a license should not be revoked or suspended, or penalties imposed, or both, for violations of this Chapter. See RSA 541-A:30, II (Prior to revocation or suspension, a licensee must have an opportunity to show compliance with all lawful requirements for the retention of the license.)

In this case, the Department has asserted that Mr. Kudalis knowingly or negligently violated RSA 397-A:14, IV(n) by engaging in a dishonest or unethical business practice when he recommended creating a fake bill of sale for the sale of tools and submitted that fake bill of sale with the consumer's mortgage loan application to underwriters. Upon review of the arguments, testimony, and exhibits submitted in this matter, I find that Mr. Kudalis recommended creating a fake bill of sale for the sale of tools and submitted that fake bill of sale with the consumer's mortgage loan application to underwriters. He has failed to show cause why his license should not be revoked and penalties imposed. Moreover, the Department has proved the truth of the propositions asserted in the Order to Show Cause by a preponderance of the evidence, to wit, Mr. Kudalis knowingly violated RSA 397-A:14, IV(n). RSA 397-A:21, IV

Accordingly, the Presiding Officer recommends that the Bank Commissioner order the following penalties:

1. Mr. Kudalis shall pay an administrative fine in the amount of \$2,500 for knowingly violating RSA 397-A:14, IV(n); RSA 397-A:21, IV. Payment of this amount shall be by check made payable to Treasurer, State of New Hampshire.
2. Mr. Kudalis's loan originator license shall be revoked for knowingly violating RSA 397-A:14, IV(n).

The payment of the fine is STAYED. As set out below, the appeal process begins with the filing of a Motion for Rehearing within 30 days of the order. If no motion is filed, the stay shall

be automatically lifted and payment shall be due on the 31st day. The filing of a motion for rehearing will continue the stay of the payment until I issue a decision on rehearing.

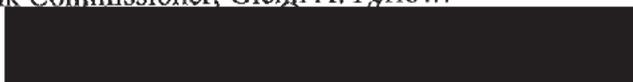
RECOMMENDED BY:

5/21/15  
Date



Stephen J. Judge  
Presiding Officer  
State of New Hampshire  
Banking Department

On May 21, 2015, the above Order was provided for review in portable document format (pdf), via electronic mail, to New Hampshire Bank Commissioner, Glenn A. Perlow.



Doreen F. Sheppard, Paralegal