

STATE OF NEW HAMPSHIRE

BANKING DEPARTMENT

In re James S. Kudalis

Case No. 13-413

ORDER TO SHOW CAUSE

Now comes the State of New Hampshire Banking Department (the “Department”) and the Bank Commissioner (the “Commissioner”), commencing an adjudicative proceeding under the provisions of RSA Chapter 397-A and RSA Chapter 541-A against the respondent, James S. Kudalis.

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 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.

FACTS

On September 19, 2013, the Department received a consumer complaint against Mr. Kudalis and Schaefer Mortgage Corporation (“Schaefer”), the mortgage company which employed Mr. Kudalis. Schaefer is licensed by the Department as a mortgage banker. Mr. Kudalis is licensed by the Department as a loan originator. The complaint focused on issues surrounding an interest rate lock.

The consumer included text messages from Mr. Kudalis with his complaint. These text messages showed that on May 28, 2013, Mr. Kudalis stated the following to the consumer:

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...

The text messages also show that Mr. Kudalis drafted a fake bill of sale for the sale of tools for the consumer to sign.

The Department forwarded the complaint and text messages to Schaefer seeking further information. Upon review of the complaint and text messages, Schaefer explained 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. A loan processor at Schaefer confirmed this requirement on May 9, 2013 and notified Mr. Kudalis. On May 13, 2013, the loan processor sent the consumer a notice requesting evidence of six months reserves, totaling approximately \$7,578.

Schaefer further told the Department that Mr. Kudalis notified Schaefer that the consumer would be selling personal tools in order to acquire the required reserves. On June 5, 2013, the consumer submitted a bank statement to underwriting showing a \$5,100 deposit on June 3, 2013. When Schaefer underwriters indicated that more support for the deposit was necessary, the consumer submitted a Bill of Sale for Misc. Construction tools. Schaefer explained to the Department 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.

Following receipt of the complaint and text messages, Schaefer terminated Mr. Kudalis's employment on September 26, 2013.

FINDINGS

Pursuant to RSA 397-A:20, VI, the Commissioner finds this Order to Show Cause is 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 this title. Additionally, the Commissioner finds that the facts as alleged above, if true, show 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.

PENALTIES

Accordingly, the Commissioner orders that Mr. Kudalis show cause why the following penalties should not be assessed:

1. Mr. Kudalis shall pay an administrative fine in the amount of \$2,500 for knowingly or negligently violating RSA Chapter 397-A. RSA 397-A:21, IV.
2. Mr. Kudalis's loan originator license shall be revoked. RSA 397-A:17, I(a).

NOTICE OF RIGHT TO A HEARING

The respondent has a right to request a hearing in writing on this Order to Show Cause. "A hearing, if requested shall be scheduled not later than 10 calendar days after the written request for such hearing is received by the commissioner, after which and within 20 calendar days from the date of the hearing the commissioner shall enter an order making such disposition of the matter as the facts require." RSA 397-A:17, I. If the respondent "fails to request a hearing within 30 calendar days of receipt or valid delivery of such order or fails to appear at a hearing after being duly notified, or cannot be located after a reasonable search, such person shall be

deemed in default and the proceeding may be decided against the person upon consideration of the order to show cause . . . the allegations of which may be deemed to be true.” Id.

RECOMMENDED by:

12/12/14
Date

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

ORDERED by:

12/12/14
Date

/s/
Ingrid E. White
Deputy Bank Commissioner
State of New Hampshire
Banking Department

CERTIFICATE OF SERVICE

I, Emelia A.S. Galdieri, hereby certify that on 12 Dec. 2014, a copy of this Order to Show Cause was sent to the following parties via U.S. Certified Mail First Class:

James S. Kudalis
6B Sargent Ave.
Nashua, NH 03064

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