



State of New Hampshire

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GLENN A. PERLOW
BANK COMMISSIONER

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DEPUTY BANK COMMISSIONER

In re- The Mortgage Specialists, Inc.

Case No. 15-163

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.

12/24/15
Date



Glenn A. Perlow

STATE OF NEW HAMPSHIRE

BANKING DEPARTMENT

In re The Mortgage Specialists, Inc., and Michael Gill, Individually
and as President of The Mortgage Specialists, Inc.

Case No. 15-163

PROPOSED FINAL ORDER

On August 26, 2015, the New Hampshire Banking Department ("Department") and the Bank Commissioner brought an adjudicative proceeding against The Mortgage Specialists, Inc. and Michael Gill, individually and as President of The Mortgage Specialists, Inc. (collectively, "Respondents"), in which the Respondents were ordered to show cause why The Mortgage Specialists' mortgage banker license should not be suspended for violating RSA 397-A:2, III, 15 U.S.C. § 6801 et seq. (Gramm-Leach-Bliley Act) and its implementing regulations, 31 U.S.C. § 5318(h) (Bank Secrecy Act) and its implementing regulations, and RSA 397-A:12, VII, VIII, XI and XV until such time as The Mortgage Specialists demonstrated evidence of an adequate Information Security Program/Safeguarding Policy and an Anti-Money Laundering Program.

In addition, the Department ordered The Mortgage Specialists to show cause why it should not pay an administrative fine in the total amount of \$55,000 for knowingly or negligently violating RSA 397-A:21, IV. The Department also ordered Respondent Gill, individually and as President of The Mortgage Specialists, to show cause why he should not pay an administrative fine in the total amount of \$55,000 for knowingly or negligently violating RSA 397-A:21, IV. The essence of this case is whether the actions of the Respondents failed to facilitate the 2015 examination relative to providing information to establish that the Respondents had an

Information Security Program and an Anti-Money Laundering Policy in place for the protection of consumers.

Upon review of the evidence submitted by the Department and the Respondents, I find that (a) The Mortgage Specialists failed to show cause why it should not pay administrative fines in the total amount of \$55,000 for knowingly or negligently violating RSA 397-A:12, VII, XI and XV; RSA 397-A:2, III, 15 U.S.C. § 6801 et seq., and 15 C.F.R. § 314 (Gramm-Leach-Bliley Act); RSA 397-A:2, III, 31 U.S.C. § 5318(h), and 31 C.F.R. § 1029.210 (Bank Secrecy Act); RSA 397-A:12, VIII; and that (b) Respondent Gill, individually and as President of The Mortgage Specialists, failed to show cause why he should not pay administrative fines in the total amount of \$55,000 for knowingly or negligently violating RSA 397-A:12, VII, XI and XV; RSA 397-A:2, III, 15 U.S.C. § 6801 et seq., and 15 C.F.R. § 314 (Gramm-Leach-Bliley Act); RSA 397-A:2, III, 31 U.S.C. § 5318(h), and 31 C.F.R. § 1029.210 (Bank Secrecy Act); RSA 397-A:12, VIII. Accordingly, the undersigned presiding officer recommends that the Bank Commissioner order The Mortgage Specialists to pay an administrative fine in the amount of \$55,000 and order Respondent Gill to pay an administrative fine in the amount of \$55,000. RSA 397-A: 21, IV.

I. INTRODUCTION

The Mortgage Specialists, Inc. ("The Mortgage Specialists") is a New Hampshire corporation, and was so registered in 1999. Exhibit ("Ex.") 1. Michael Gill is sole owner and controls The Mortgage Specialists. Ex. A; Ex. 2. The Mortgage Specialists is licensed by the New Hampshire Banking Department ("Department") as a mortgage banker pursuant to RSA 397-A:1, VII.

The New Hampshire Banking Department (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.

Pursuant to its authority under RSA 397-A: 12, the Department began an examination of The Mortgage Specialists on March 5, 2015. On August 26, 2015, the Department issued an Order to Show Cause why penalties should not be imposed on Respondents for failing to provide information needed to complete and to facilitate the examination and for failing to demonstrate that Respondents maintained an Information Security Program and an Anti-Money Laundering policy as required by federal law. Order to Show Cause (Aug. 26, 2015).

On October 6, 2015, I issued a Notice of Hearing on Petitioner's Order to Show Cause for October 23, 2015. This hearing date was moved to November 18, 2015 at the request of the Respondents. By request of the Respondents received by the presiding officer on November 13, 2015, the hearing was again continued and rescheduled for November 24, 2015.

The Department filed two prehearing motions in response to Respondents' Witness and Exhibit List, which was filed on November 13, 2015. First, the Department filed a motion to exclude three of the Respondents' witnesses. Those witnesses were the Banking Department Commissioner and two attorneys who had represented Mr. Gill on various matters in the past, Attorney Jonathan Friedmann and Attorney Alex Walker. In addition, the Department filed a motion to seal Respondents' Exhibit A, which is a copy of the Report of Examination for the 2015 exam of The Mortgage Specialists. Respondents filed an objection to the motion to exclude witnesses, asserting that the witnesses had knowledge of the "FRM Ponzi Scheme" and of assorted actions coordinated against Mr. Gill, individually.

On November 23, 2015, the day prior to the scheduled hearing date, Respondents filed a motion to continue the hearing for the purpose of subpoenaing those witnesses. On that date, the Department filed an objection, arguing that Respondents had sufficient time to request to subpoena witnesses and that the hearing had already been continued twice for the convenience of Mr. Gill. This presiding officer denied the motion to continue.

The hearing on the Order to Show Cause commenced on November 24, 2015. The Department was represented by hearings examiner, Attorney Rosemary Wiant. Mr. Gill appeared pro se.

Prior to the introduction of testimony, I heard arguments on the two motions filed by the Department. The Department's motion to exclude the testimony of the Commissioner, Attorney Jonathon Friedmann and Attorney Alex Walker was granted because the asserted testimony is not related to the issues before this presiding officer as noticed in the Order to Show Cause. I also granted the Department's motion to seal Respondents' Exhibit A as confidential pursuant to RSA 383:10-b.

The hearing was unable to be completed due to Mr. Gill's repeated interruptions and outbursts pertaining to matters that were not before the presiding officer and that were not related to the Order to Show Cause.¹ As a result, the parties were instructed to submit the matter by brief and to file proposed findings and rulings and a proposed order. All filings were due by December 9, 2015. Respondents' Proposed Findings of Fact and Conclusions of Law were received on December 10, 2015 and nevertheless been considered and reviewed. This Order is based on the pleadings, the exhibits, the arguments and testimony provided at the hearing on November 23, 2015, and the parties' briefs.

¹ Respondent Gill at the commencement of the hearing referred to his belief that the State of New Hampshire has engaged in what he termed "corrupt" actions related to what he termed "the FRM Ponzi" matter and various "conspiracies" against him.

II. FACTS

A. The Record

I begin with a brief discussion of my role as presiding officer, the use of the parties' requests for findings of fact and rulings of law, and the use of briefs. As presiding officer, I am authorized to conduct the hearing and complete the record in a fair and timely manner. Jus 803.01(g). The record includes, as relevant here, evidence received or considered. RSA 541-A: 31(VI)(c). Evidence is testimony, documents, or matters officially noticed. RSA 541-A: 33; Jus 812.04. Jus 803.01 (b) instructs the presiding officer, "as necessary," to "regulate and control the course of a hearing," "[r]eceive relevant evidence at hearings and exclude irrelevant, immaterial or unduly repetitious evidence," "[r]ule on procedural requests, including adjournments or postponements, at the request of a party or on the presiding officer's own motion," and "[t]ake any other action consistent with applicable statutes, rules and case law necessary to conduct the hearing and complete the record in a fair and timely manner." Jus 803.01 (b) (1), (5), (6), (9); RSA 541-A:33, II.

From the commencement of the November 24, 2015 hearing to its completion, Respondent Gill insisted on interrupting both counsel for the Department and this presiding officer. I called for a recess after approximately 40 minutes. Upon the re-commencement of the hearing, it became apparent that Respondent Gill would not cease in interrupting counsel for the Department during her attempt at direct examination of the Department's first witness by asking the Department's counsel direct questions and by asking direct questions of the witness herself, nor would he cease in interrupting the presiding officer after being asked to do so. While the Department's counsel was able to elicit testimony from its witness, Lorry Cloutier, it was clear that Mr. Gill would not accept the requests of the presiding officer to cease interruptions of the presentation of evidence.

As a result, on the initiative of the presiding officer pursuant to Jus 803.01 (b), and in order to complete the record in a fair and timely manner pursuant to Jus 803.01 (g), I moved and ordered that the matter be submitted to me based on the record and requested that the parties file requests for findings of fact and rulings of law, briefs, and proposed orders.

B. The NH Banking Department's Examination

To evaluate and monitor compliance with state and federal laws, the Department conducts examinations of its licensees on an eighteen-month cycle. Testimony Cloutier; *see* RSA 383:9, RSA 397-A:12, I. The Department conducted a regular examination of The Mortgage Specialists beginning on March 5, 2015. Testimony Cloutier; Ex. A. By letter dated January 26, 2015, the Department notified The Mortgage Specialists that it was due for an examination and that examiners would arrive on-site to conduct the examination on March 9, 2015. Ex. 3.

The notice included a Document Request List ("DRL"), with instructions to provide the requested documents to the on-site examiners on March 9, 2015. Ex. 3. All mortgage bankers receive the same DRL and are required to provide the same information as was required of The Mortgage Specialists. Testimony Cloutier. The DRL requires the licensee to provide a broad array of information or documents, ranging from information about its organizational structure, to its complaint policy, quality control measures, financial statements and loan files. *See* Ex. 3. Each category of information requested is numbered and licensees are instructed to provide a response to each item and to mark each document to correspond to the DRL item number to which it pertains. Ex. 3. Item 4 on the DRL requested:

Copy of the Information Security Program/Safeguarding Policy, as well as provide the latest risk assessment, documentation of testing for the prior year, and the schedule of evaluations and any recommended changes to the program during the prior year.
Ex. 3.

Ex. 3. Item 6 on the DRL requested:

The following Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) documents:

- a. A copy of the Anti-Money Laundering Program.
- b. A copy of the company's board resolution adopting policies and programs to implement the federal AML programs.
- c. A copy of the company's board resolution naming a Compliance Officer responsible for implementing and reporting upon AML programs.
- d. Provide your company's policies and procedures for complying with the federal BSA and AML program requirements.
- e. A copy of the most recent written Risk Assessment of the licensee performed in accordance with the BSA.
- f. A copy of the most recent independent review of the BSA/AML program.
- g. A copy of the BSA, OFAC and AML formal training program for employees; additionally, please provide copies of the documentation to confirm employee training over the past 18 months.

Ex. 3.

When the Department's examiners arrived at The Mortgage Specialists on March 9, 2015, they were provided a response, with attachments, to the DRL list. *See* Ex. 4.² However, no information was provided in response to items 4 and 6. Lorry Cloutier, the examiner in charge, inquired with Jeffery Jones, compliance officer for The Mortgage Specialists, who stated that employees of The Mortgage Specialists were in the process of gathering the information for those items. Testimony Cloutier. The examiners were on site at The Mortgage Specialists from March 9, 2015 through March 13, 2015, but were not provided any information about an Information Security Program or Anti-Money Laundering program, as required by Items 4 and 6 of the DRL. *See* Ex. 3, 5.

On Monday, March 16, 2015, Ms. Cloutier began emailing Jeffrey Jones, compliance officer for The Mortgage Specialists, and Aysa Crane, controller for The Mortgage Specialists, to identify and obtain responses to the outstanding issues and questions that The Mortgage Specialists needed to address. Ex. 5. The outstanding issues included "DRL, items 4 [and] 6,"

² Other than references to DRL Items 4 and 6, which are at issue in the instant matter as set forth in the Order to Show Cause, the Department's Exhibits 4 – 19 have been redacted to protect the confidentiality of examination related information and materials, pursuant to the provisions of RSA 383:10-b and RSA 397-A:12, X.

which required documentation related to an Information Security Program and Anti-Money Laundering policy. Ex. 3, 5.

Ms. Cloutier continued to attempt to obtain the needed information throughout the following weeks, without success. Between March 16, 2015 and May 11, 2015, Ms. Cloutier sent no fewer than twelve emails to Mr. Jones and/or Ms. Crane to attempt to obtain documentation about the existence of an Information Security Program and an Anti-Money Laundering program. Ex. 5-19. Twice she offered to return on-site to review the information and twice she explicitly asked Mr. Jones to "please facilitate the exam." Ex. 13-14. Eventually, on April 30, 2015, Mr. Jones responded that he would get the information "in the next couple of days." Ex. 16. That was the last response from Respondents until Respondent Michael Gill emailed the Department copies of the Information Security and Anti-Money Laundering policies on October 2, 2015. Ex. 20.

III. DISCUSSION

A. Applicable Regulatory Framework

RSA 397-A establishes a comprehensive regulatory scheme for the Department's "regulation of persons that offer, originate, make, fund, or broker" mortgage loans in New Hampshire. RSA 397-A:12. Persons licensed under RSA 397-A are required to comply with all applicable state and federal laws and regulations. RSA 397-A:2, III. The federal laws and regulations include, but are not limited to, provisions of the Gramm-Leach-Bliley Act requiring an Information Security Program, 15 U.S.C. § 6801, et seq., and the Bank Secrecy Act requiring an Anti-Money Laundering program, 31 U.S.C. § 5318(h). To evaluate and monitor compliance with state and federal laws, the Department conducts examinations of its licensees on an eighteen-month cycle. Testimony Cloutier; *see* RSA 383:9, RSA 397-A:12, I.

New Hampshire state law requires licensees to cooperate with the Department to facilitate the conduct of an examination. RSA 397-A:12, VII provides:

Every person being examined, and all of the officers, directors, employees, agents, and representatives of such person *shall make freely available to the commissioner or his or her examiners*, the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination *and shall facilitate the examination*. (Emphasis added).

The statute directly requires that licensees actively engage in assisting the examiners through the timely production of requested documents and information. "Facilitate" denotes "to free from difficulty or impediment," and "to make easier or less difficult; free more or less completely from obstruction or hindrance." Black's Law Dictionary 531 (5th ed. 1979).

In addition, RSA 397-A:12, XI specifically obligates the licensee to "make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of the chapter." Similarly, RSA 397-A:12, XV forbids a licensee from "knowingly" withholding records or information.

A licensee may be sanctioned for violating its obligation to facilitate or otherwise cooperate with the Department during the conduct of an examination. RSA 397-A:21 sets forth penalties that may be imposed for violations of RSA 397-A. RSA 397-A:21, IV provides:

Any person who, either knowingly or negligently, violates any provision of this chapter may, upon notice and opportunity for hearing, and in addition to any such other penalty provided for by law, be subject to suspension, revocation or denial of any registration or license, including forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and each such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed.

Similarly, RSA 397-A:21, V provides, in pertinent part:

Every person who directly or indirectly controls a person liable under this section ... may, upon notice and opportunity for hearing, and in addition to any other penalty provided for by law, be subject to suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or the imposition of an

administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation No person shall be liable under this paragraph who shall sustain the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist.

An individual with the "power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise" is presumed to exert control within the meaning of RSA 397-A:21, V. *See* RSA 397-A:1, V-a.

B. Obligation to Facilitate an Examination

RSA 397-A:12 authorizes the Department to examine the business affairs and records of its licensees to determine compliance with state and federal law. RSA 397-A:12, I-IV. Such examination may be initiated with or without prior notice to the licensee. RSA 397-A:12, III. The Department may examine an entity at any time but no less frequently than every eighteen months unless certain exceptions apply. RSA 397-A:12, III; RSA 383:9 (eff. until Oct. 1, 2015); *see also* RSA 383:9 and RSA 383-9-a (eff. Oct. 1, 2015).

Persons subject to examination are obligated to "make freely available" to the Department the records or documents relating to the subject of the examination and "shall facilitate the examination." RSA 397-A:12, VII. In addition, persons subject to the Department's jurisdiction are required to "make or compile reports or prepare other information as directed" by the Department. RSA 397-A:12, XI. RSA 397-A:12, XV provides that knowingly withholding information shall be considered fraud. The statutory enunciation of facilitation as set forth in RSA 397-A:12, VII obliges licensees to remove hindrances and obstructions to the examination.

C. Relevant Evidence – Failure to Facilitate

I find that the evidence submitted by the Department establishes that The Mortgage Specialists, Inc., and Michael Gill, as its person in control, negligently or knowingly failed to provide the Department examiners with information necessary to facilitate, and thus to complete,

the examination of the business. The exhibits demonstrate that Respondents were informed in January 2015, that the examiners would be onsite beginning March 9, 2015, and that Respondents were required to gather certain information to provide to the examiners. Specifically, that information was detailed in the Document Request List that was included with the notice of exam and sent to Respondents on January 26, 2015. Ex. 3. The information required from Respondents included specified pieces of information needed to demonstrate the existence of a thorough and dynamic Information Security Program (item 4 on the Document Request List), as required by the Gramm-Leach-Bliley Act, 15 U.S.C. 1608, et seq. *Id.* The information required also included specified documents needed to demonstrate a comprehensive Anti-Money Laundering program, as required by the Bank Secrecy Act, 31 U.S.C. § 5318(h). *Id.* The evidence demonstrates that Respondents did not provide the information to the on-site examiners. Between March 16, 2015 and May 11, 2015, ten separate requests were made for the Information Security Program and Anti-Money Laundering Program policies and procedures.³ Moreover, Respondents ignored all subsequent efforts by the Department to obtain the information. For a full two months following the on-site portion of the examination, Ms. Cloutier repeatedly emailed Respondents seeking the missing information. The sheer volume of emails from Ms. Cloutier that went essentially unanswered demonstrates a complete disregard by Respondents of their obligation to cooperate with the examiners. Thus, the evidence demonstrates that Respondents knowingly withheld the information and failed to facilitate the examination pursuant of the provisions of RSA 397-A: 12, VII.

³ Requests were made on March 16, 2015; March 20, 2015; March 23, 2015; March 27, 2015; April 8, 2015; April 16, 2015; April 27, 2015; May 1, 2015; May 4, 2015; and May 11, 2015.

D. Information Security Program

As a mortgage banker, Respondents have an affirmative and continuing duty to protect the security and confidentiality of consumers' nonpublic personal information. The Gramm-Leach-Bliley Act, 15 U.S.C. § 6801, et seq., requires financial institutions, which include mortgage lenders and brokers, to "develop, implement and maintain a comprehensive information security program" to "protect the security, confidentiality and integrity of customer information." 16 C.F.R. § 314.1; 16 C.F.R. § 314.3; *see* RSA 397-A:2, III (requiring licensees to comply with federal law).⁴ A comprehensive information security program involves conducting a risk assessment to "identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of consumer information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information." 16 C.F.R. § 314.4(b). It also requires designing and implementing safeguards to control the risks identified in the risk assessment, taking steps to engage service providers that are capable of maintaining appropriate information safeguards, continuing to evaluate and adjust the program as necessary and designating an employee to be responsible for coordinating the information security program. 16 C.F.R. § 314.4.

As part of an examination, the Department requires that licensed mortgage bankers demonstrate that they have implemented and maintain a comprehensive Information Security Program containing those documents and policies set out in Item 4 of Ex. 3. Accordingly the Document Request List that the Department provided Respondents prior to the examination instructed Respondents to compile information relevant to evaluating the program and to have the information available for the on-site examiners on March 9, 2015. Ex. 3. One component of

⁴ 16 CFR § 314.1 et seq. applies in general to the handling of customer information. Particular standards are set forth in 16 CFR § 314.3 with the objectives of insuring confidentiality, protecting against hazards to the security of information, and protecting against unauthorized access to information that could result in substantial harm or inconvenience to any customer. 16 CFR §314.3 (b).

the information requested pertained to the policy used during the prior year. Ex. 3. The evidence demonstrates that Respondents failed to provide any information to document the existence of an Information Security Program until October 2, 2015. Thus, the conclusion is that until that point, Respondents had no program in place, constituting a violation of RSA 397-A:2, III, 15 U.S.C. § 6801 et seq. and 15 C.F.R. § 314. There is no evidence before me that Respondent Gill or employees of The Mortgage Specialists attempted to notify the Department of the existence of a compliant Information Security Program until October 2, 2015.

In addition, because the Department found deficiencies in this area during the 2013 examination, the lack of an Information Security Program also constitutes a failure to correct the deficiencies identified during the prior examination, in violation of RSA 397-A:12, VIII.

E. Anti-Money Laundering Program

The Bank Secrecy Act requires financial institutions, including non-depository mortgage lenders and brokers, to establish and maintain an anti-money laundering program. 31 U.S.C. § 5318(h); *see* 77 Fed. Reg. 8148 (Feb. 14, 2012) (clarifying that non-bank residential mortgage lenders, brokers and originators are "loan or finance companies," which are included within the definition of "financial institution"). The purpose of the law is "to prevent the loan or finance company from being used to facilitate money laundering or the financing of terrorist activities." 31 C.F.R. § 1029.210 (a).⁵ Consequently, "businesses are required to implement risk-based programs that take into account the unique risks associated with that particular business' products and services, as well as the business' size, market, and other issues." 77 Fed. Reg. 8148, 8153.

⁵ 31 CFR § 1029.210 sets forth anti-money laundering programs for loan or finance companies and the requirements for their establishment.

As part of an examination, the Department requires that mortgage bankers demonstrate that they have an adequate Anti-Money Laundering program in place. Ex. 3 (item 6). Six weeks prior to arriving at The Mortgage Specialists' place of business, the Department instructed Respondents via the Document Request List to compile information relevant to evaluating the Anti-Money Laundering program and to have the information available for the on-site examiners on March 9, 2015. Ex. 3. One component of the information requested pertained to training applicable to the policy in place during the previous eighteen months. Ex. 3. The evidence demonstrates that Respondents failed to provide any information to document the existence of an Anti-Money Laundering program until October 2, 2015. Thus, this presiding officer concludes that until that point, Respondents had no program in place, constituting a violation of RSA 397-A:2, III; 31 U.S. C. § 5318(h); and 31 C.F.R. § 1029.210. There is no evidence before me that Respondent Gill or employees of The Mortgage Specialists attempted to notify the Department of the existence of a compliant Anti-Money Laundering Program until October 2, 2015.

In addition, because the Department found deficiencies in this area during the 2013 examination, the lack of an Anti-Money Laundering program also constitutes a failure to correct the deficiencies identified during the prior examination, in violation of RSA 397-A:12, VIII.

At all times from the commencement of the examination and until the Department was provided with Respondents' complaint Information Security Program and a complaint Anti-Money Laundering Program, I find that Respondent Gill was a "person" in control of The Mortgage Specialists as such term is defined in RSA 397-A:1, V-a and as such term is employed in RSA 397-A:21, IV.

IV. REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW

1. The NH Banking Department's Requests for Findings and Rulings

A. Findings of Fact

1. Granted.
2. Granted.
3. Granted.
4. Granted. It is noted that Lorry Cloutier was the bank examiner in charge of the 2015 examination and has been a bank examiner with the Department for twelve years.
5. Granted.
6. Granted.
7. Granted; the location of the on-site examination was at the Respondents' offices in Plaistow, New Hampshire.
8. Granted.
9. Granted.
10. Granted.
11. Granted.
12. Granted.
13. Granted.
14. Granted.
15. Granted.
16. Granted.

17. Granted.
18. Granted.
19. Granted,
20. Granted.
21. Granted.
22. Granted.
23. Granted.
24. Granted.
25. Granted, and noting that the language of the request was as follows:
“Please facilitate the examination to address the outstanding questions.”
26. Granted.
27. Granted.
28. Granted.
29. Granted, and noting that emails from Ms. Cloutier to Mr. Jones were sent on May 1, 2015 (Ex. 17); May 4, 2015 (Ex. 18); and May 11, 2015 (Ex. 19).
30. Granted.
31. Granted.
32. Granted.

B. Rulings of Law

- A. Granted.
- B. Granted.

- C. Granted.
- D. Granted.
- E. Granted.
- F. Granted.

2. Respondents' Request for Findings of Fact and Rulings of Law

A. Findings of Fact.

- 1. Granted.
- 2. Granted.
- 3. Granted, in so far as this statement describes certain functions of the New Hampshire Banking Department.
- 4. Granted as to the first sentence with the correction that the Department commenced its regular examination of The Mortgage Specialists on March 5, 2015. The second sentence is denied due to a lack of any factual basis.
- 5. Denied.
- 6. Denied as to a lack of any factual basis.
- 7. Neither granted nor denied.
- 8. Denied.
- 9. Granted.
- 10. Granted as to evidence that Mr. Jones had an illness of some type; denied as to the remainder of the request.

B. Rulings of Law.⁶

- A. Denied as to the extent it presents a legal argument that the hearing on the Order to Show Cause was not properly brought pursuant to the Department's statutory authority under RSA Chapter 397-A. The remainders of the statements in the paragraph are denied because they do not set forth proposed findings of law.
- B. Denied; these statements do not set forth proposed findings of law.
- C. Denied; these statements do not set forth proposed findings of law.
- D. Denied to the extent that this statement suggests that the Presiding officer's decision to allow redacted portions of emails to be presented as evidence was error; further denied as to the remainder of the paragraph.
- E. Denied to the extent that the statement suggests that Attorney Wiant possessed a conflict; further denied in that these statements do not set forth proposed findings of law.
- F. Neither granted nor denied.
- G. Denied to the extent that the Respondents suggest any cooperation with the Department in producing the required documents and policies until October 2, 2015.
- H. Denied.

V. RECOMMENDATION

Based on the evidence and arguments submitted by the parties, this presiding officer finds that Respondents failed to cooperate with the Department's efforts to conduct its examination, constituting a failure to facilitate the examination, in violation of RSA 397-A:12, VII. In

⁶ I note that the Respondents have provided "Proposed Conclusions," which I treat as proposed Rulings of Law. The Proposed Conclusions are neither set forth alphabetically nor numbered. For the sake of clarity, therefore, I treat each paragraph of the "Proposed Conclusions" as a separate proposed Ruling of Law and separately use letters which correspond to each paragraph.

addition, Respondents failed to provide requested information and knowingly or negligently withheld the requested information, in violation of RSA 397-A:12, XI and XV. I have taken into account the evidence introduced that the Respondent Michael Gill on October 2, 2015 did provide the Department with the requisite information. While the Order to Show Cause of August 26, 2015 ordered that The Mortgage Specialists' mortgage banker license be suspended, such suspension has not been requested by the Department. It is clear the programs that are based upon federal law and regulation and mandated for licensees under RSA 397-A:2, III exist to protect consumers, and that the absence of such programs affects the public interest. I find that for a significant period of time the Respondents knowingly or negligently failed to ensure such programs were in place as required.

Respondents' delay for seven months in producing documentation which is needed to demonstrate the existence of programs intended for the protection of consumers warrants a finding that the Respondents had no such policy in place prior to October 2, 2015. Accordingly, this presiding officer finds that Respondents failed to "develop, implement, and maintain a comprehensive Information Security Program" to safeguard personal information gathered from its customers, in violation of RSA 397-A:2, III, 15 U.S.C. § 6801 et seq. and 15 C.F.R. 314 (Gramm-Leach-Bliley Act). This presiding officer also finds that Respondents failed to develop and implement a written Anti-Money Laundering program reasonably designed to prevent The Mortgage Specialists from being used to facilitate money laundering or for the financing of terrorist activities, in violation of RSA 397-A:2, III and 31 U.S.C. § 5318(h) and 31 C.F.R. § 1029.210 (Bank Secrecy Act).

Based upon the foregoing, the Presiding Officer recommends that the Bank

Commissioner order the following penalties:

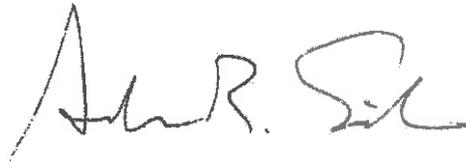
1. The Mortgage Specialists, Inc. is ordered to pay administrative fines in the amount of:
 - (a) \$25,000 for knowingly or negligently failing on ten (10) occasions to provide requested information relating to its information security program (RSA 397-A:12, VII, XI, and XV; RSA 397-A: 21, IV);
 - (b) \$2,500 for failing to have an information security program in place (RSA 397-A:2, III; RSA 397-A:21,IV);
 - (c) \$25,000 for failing on ten (10) occasions to provide requested information relating to its anti-money laundering program (RSA 397-A:2, III; RSA 397-A:21, IV); and
 - (d) \$2,500 for failing to have an anti-money laundering program in place (RSA 397-A:21, IV), for a total penalty of \$55,000, which The Mortgage Specialists, Inc. shall immediately remit by check made payable to the New Hampshire Banking Department; and
2. Michael Gill is liable pursuant to RSA 397-A:21, IV and is ordered to pay administrative fines in the amount of:
 - (a) \$25,000 for knowingly or negligently failing on ten (10) occasions to provide requested information relating to the information security program of The Mortgage Specialists (RSA 397-A:12, VII, XI, and XV; RSA 397-A: 21, IV);
 - (b) \$2,500 for failing to have an information security program in place;
 - (c) \$25,000 for failing to provide requested information relating to its anti-money laundering program (RSA 397-A:12, VII, XI, and XV; RSA 397-A: 21, IV); and

(d) \$2,500 for failing to have an anti-money laundering program in place, for a total penalty of \$55,000, which Michael Gill shall immediately remit by check to the New Hampshire Banking Department.

3. The payments of the fines are STAYED. The appeal process begins with the filing of a Motion for Rehearing within 30 days of this order. If no motion is filed, the stay shall be automatically lifted and payment shall be due on the 31st day following the date of the order. The filing of a motion for rehearing will continue the stay of the payment until further order.

RECOMMENDED BY:

December 24, 2015



Andrew B. Eills, Esquire
Presiding Officer
State of New Hampshire
Banking Department

On December 24, 2015, the above Order was provided for review in portable document format (pdf), vial electronic mail, to the New Hampshire Bank Commissioner, Glenn A. Perlow.

By: 