

**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

ORDER TO SHOW CAUSE

Now comes the State of New Hampshire Banking Department (“Department”) and the Bank Commissioner (“Commissioner”), commencing an adjudicative proceeding under the provisions of RSA Chapter 397-A and RSA Chapter 541-A against the respondents, The Mortgage Specialists, Inc. (“TMS”) and Michael J. Gill, individually and as President of TMS.

RESPONDENTS

1. TMS is a New Hampshire corporation, licensed by the Department since January 4, 1999 as a mortgage banker, with a principal office location in Plaistow, New Hampshire.
2. Michael Gill is the 100% owner and President of TMS. Mr. Gill is presumed to control TMS under RSA 397-A:1, V-a.

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 or any person under the commissioner’s jurisdiction 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

1. In January 2015, the Department notified TMS in writing that it would be conducting an examination of its New Hampshire licensed mortgage activity. The notification was sent to TMS via certified mail and received by TMS on January 29, 2015.
2. The written notification included a Document Request List, with instructions that the documents were to be compiled and provided to the on-site examiners on March 9, 2015.
3. On March 5, 2015, the Department, pursuant to its authority under RSA 397-A:12 and RSA 383:9, I, commenced the examination of TMS.

Failure to Facilitate

4. As part of its examination, the Department requested copies of various documents, including a copy of TMS's Information Security Program/Safeguarding Policy, the most recent risk assessment, a copy of TMS's Anti-Money Laundering Program ("AML") and policies and procedures for complying with the Bank Secrecy Act and AML requirements.
5. Besides the fact that the documents were requested as part of the pre-examination procedures via the Document Request List, the Department requested the above documents on approximately ten different occasions between March 16, 2015 and May 11, 2015. Specifically, the Department requested copies of the Safeguarding/Information Security Policy, the AML policy and Mortgage Call Reports on March 16, 2015, March 20, 2015, March 23, 2015, March 27, 2015, April 8, 2015, April 16, 2015 and April 27, 2015, May 1, 2015, May 4, 2015 and May 11, 2015.
6. As of the date of this Order, TMS has not provided the requested documents.
7. Failure to provide the requested documents constitutes a failure to facilitate the examination, in violation of RSA 397-A:12, VII, which 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.

8. Failure to provide the requested documents also constitutes a violation of RSA 397-A:12, XI (requiring licensees to provide information requested by the Department during an examination) and RSA 397-A:12, XV (providing that no licensee shall knowingly withhold such information).

9. Failure to facilitate the examination was also a finding made in the 2013 examination report of TMS. The finding was a result of various issues, including the refusal to provide certain information requested by the examiners.

Lack of Information Security Program

10. As a mortgage banker and broker, TMS has an affirmative and continuing duty to protect the security and confidentiality of its customers' nonpublic person information. Gramm-Leach-Bliley Act, 15 U.S.C. §6801(a); *see* RSA 397-A:2, III (requiring compliance with applicable federal laws and regulations).

11. To meet this obligation, TMS is required to "develop, implement, and maintain a comprehensive information security program" ("ISP") to safeguard personal information gathered from its customers. 16 C.F.R. § 314.3. More specifically, TMS is required to designate an employee responsible for coordinating the ISP, conduct a risk assessment to evaluate the risk of unauthorized disclosure, misuse, alteration, destruction or other compromise of customer information and regularly test or monitor the program's effectiveness. 16 C.F.R. §§ 314.4.

12. TMS failed to provide any documentation to demonstrate that it has any ISP in place.

13. TMS's failure to maintain a comprehensive ISP is a violation of 15 U.S.C. §6801, 16 C.F.R. §314 and RSA 397-A:2, III.

14. The failures around developing, implementing and maintaining a written ISP were also observations made in the 2013 examination report of TMS.

15. TMS has failed to provide any evidence that these failures have been corrected. TMS's failure to correct the deficiencies is a violation of RSA 397-A:12, VIII.

Lack of Anti-Money Laundering Program

16. Pursuant to the Bank Secrecy Act and its implementing regulations, TMS is required to develop and implement a written anti-money laundering program ("AML") reasonably designed to prevent TMS from being used to facilitate money laundering or for the financing of terrorist activities. 31 U.S.C. § 5318(h); 31 C.F.R. § 1029.210. The AML program must be approved by senior management and must include policies, procedures and controls based upon the company's assessment of risk, identify a designated compliance officer, provide for on-going training and provide for independent testing of the program's adequacy. 31 C.F.R. § 1029.210.

17. TMS failed to provide any documentation to demonstrate that it has any AML policy in place.

18. TMS's failure to design and implement an AML program is a violation of 31 U.S.C. § 5318(h), 31 C.F.R. § 1029.210 and RSA 397-A:2, III.

19. In the 2013 examination of TMS, TMS was cited for failing to demonstrate that the AML policy had been approved by senior management, failing to address on-going training and failing to provide for independent testing.

20. During the current examination, TMS failed to provide any evidence that the prior deficiencies have been corrected. TMS's failure to correct the deficiencies is a violation of RSA 397-A:12, VIII.

21. Following its examination, the Department prepared a report of examination, detailing findings and including necessary corrective actions where appropriate. In July 2015, the Department attempted to meet with TMS to conduct an exit interview to discuss its findings and attempt to resolve the identified deficiencies. However, TMS did not respond to the Department's offer to schedule an interview. This Show Cause Order follows.

FINDINGS

1. Based on the above information, the Commissioner finds that this order to show cause why TMS's mortgage banker license should not be suspended, with penalties, is in the public interest.

2. The facts as alleged above, if true, show that Respondents violated the following provisions of law:

a. RSA 397-A:12, VII, XI and XV: Failure to facilitate the examination, failure to provide requested information and knowingly or negligently withholding requested information.

b. RSA 397-A:2, III, 15 U.S.C. § 6801 et seq and 15 C.F.R. 314 (Gramm-Leach-Bliley Act): Failure to "develop, implement, and maintain a comprehensive information security program" to safeguard personal information gathered from its customers.

- c. RSA 397-A:2, III and 31 U.S.C. § 5318(h) and 31 C.F.R. § 1029.210 (Bank Secrecy Act): Failure to develop and implement a written anti-money laundering program reasonably designed to prevent TMS from being used to facilitate money laundering or for the financing of terrorist activities.
- d. RSA 397-A:12, VIII: Failure to correct deficiencies relative to an information security program identified in the 2013 examination.
- e. RSA 397-A:12, VIII: Failure to correct deficiencies relative to an anti-money laundering program identified in the 2013 examination.

ORDER

THEREFORE, IT IS ORDERED that Respondents show cause why TMS's 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 TMS provides evidence of an adequate ISP and AML policy, as determined by the Department; and

IT IS FURTHER ORDERED that TMS shall be liable, pursuant to RSA 397-A:21, IV, for administrative fines in the amount of: \$25,000 for knowingly or negligently failing to provide requested information relating to its information security program; \$2,500 for failing to have an information security program in place; \$25,000 for failing to provide requested information relating to its anti-money laundering program; and \$2,500 for failing to have an anti-money laundering program in place, for a total penalty of \$55,000, which TMS shall remit by check to the New Hampshire Banking Department; and

IT IS FURTHER ORDERED that Michael Gill shall be liable pursuant to RSA 397-A:21, IV, for administrative fines in the amount of: \$25,000 for knowingly or negligently failing to provide requested information relating to its information security program; \$2,500 for failing to have an information security program in place; \$25,000 for failing to provide requested information relating to its anti-money laundering program; and \$2,500 for failing to have an anti-money laundering program in place, for a total penalty of \$55,000, which Michael Gill shall remit by check to the New Hampshire Banking Department; and

IT IS FURTHER ORDERED that Respondents shall have the opportunity for a hearing on this Order by requesting, in writing, a hearing within thirty calendar days of receipt or valid delivery of this Order, pursuant to RSA 397-A:17, I; and

IT IS FURTHER ORDERED, pursuant to RSA 397-A:17, I, that if Respondents do not request a hearing as provided above, within thirty calendar days of receipt or valid delivery of this order, then Respondents shall be deemed in default, and this order shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown.; and

IT IS FURTHER ORDERED that nothing herein shall prevent: 1) the Department from taking any further administrative and legal action as necessary under New Hampshire law; or 2) the New Hampshire Office of the Attorney General from bringing an action against the above named Respondents in any New Hampshire superior court, with or without prior administrative action by the Commissioner.

SO ORDERED:

08/26/15
Date

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

CERTIFICATE OF SERVICE

I, Rosemary Wiant, hereby certify that on 8-27-15, a copy of this Order to Show Cause was sent to the following parties via U.S. Certified Mail First Class:

The Mortgage Specialists, Inc.
2 Main Street
Plaistow NH 03865

Mr. Michael J. Gill
President
The Mortgage Specialists, Inc.
2 Main Street
Plaistow NH 03865

/s/
Rosemary Wiant
Hearings Examiner
State of New Hampshire
Banking Department