

**In re – Whistling Pines, Inc. (d/b/a Whispering Pines Mobile
Home Village & Sales and d/b/a NH Manufactured Housing
Loan); and Alan G. Simard**

Case No. 19-220

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

2/20/2020
Date



Gerald H. Little
Banking Commissioner

State of New Hampshire Banking Department

In re:

Whistling Pines, Inc. (d/b/a Whispering Pines
Mobile Home Village & Sales and d/b/a NH
Manufactured Housing Loan); and Alan G.
Simard

Case No.: Case No. 19-220

PROPOSED FINAL ORDER

I. Introduction

On November 22, 2019, the New Hampshire Banking Department (the “Department”) issued a Notification of Fine and Invoice to Respondent Whistling Pines Inc. (“Whistling Pines”) for filing its financial statement 46 days late. Ex. 6. A request for abatement of the fine was submitted by Respondent Alan G. Simard (“Mr. Simard”) on December 5, 2019, pursuant to RSA 397-A:22, V. On December 18, 2019, the Bank Commissioner denied Mr. Simard’s request for a waiver. Ex. 7. On December 31, 2019, Mr. Simard requested a hearing on the Bank Commissioner’s denial to waive the \$1,150.00 late filing fee of Whistling Pines’ financial statement. A hearing was held on February 6, 2020.

Upon review of the evidence submitted at the hearing, I find Respondents failed to show good cause for why the \$1,150.00 late filing fee should be abated. *See* RSA 397-A:22, V. Accordingly, the undersigned Presiding Officer recommends that the Bank Commissioner maintain his denial of the Respondents’ request for waiver of their \$1,150.00 fine for a late filed financial statement.

II. Jurisdiction

Respondents are regulated under RSA Chapter 397-A. There is no dispute that Mr. Simard is the President and indirect owner of Whistling Pines and that Whistling Pines has been licensed with the Department as a mortgage broker since 2006. Ex. 1.

III. Analysis

Respondents requested a hearing to challenge a fine imposed for a late-filed financial statement. Respondents are regulated under RSA Chapter 397-A, and are required to submit a financial statement within 90 days from the Respondent Company's fiscal year end, in accordance with RSA 397-A:13, II. RSA 397-A:13, IV imposes a \$25 per day fine for each day the financial statement is late (maximum fine of \$2,500.00). There is no dispute that Respondents' financial statement was filed 46 days late. Respondents were fined a total of \$1,150.00 for the late filled financial statement on November 22, 2019. Ex. 6.

A request for abatement of the fine was requested by Mr. Simard on December 5, 2019. The Commissioner has the authority to abate a fine imposed under RSA 397-A:22, V "for good cause shown." The Company asserted that the reason for failing to file its financial statement in a timely manner was because it was unable to work with the Nationwide Multistate Licensing System and Registry ("NMLS"). Ex. 7. On December 18, 2019, the Bank Commissioner denied the request for abatement. *Id.*

At the hearing, Mr. Simard testified he believed he filed the financial statement in early August 2019 through NMLS, but was unaware his filing was incomplete until October 2019 when he filed Whistling Pines' quarterly required mortgage call report. However, Mr. Simard testified he was aware that Whistling Pine's financial statement was required to be filed annually through NMLS no more than 90 days after its fiscal year end (July 31). *See* RSA 397-A:13, II. Additionally,

Mr. Simard testified Whistling Pines had been licensed with the Department since 2006, and he, on behalf of Whistling Pines, had filed previous financial statements and mortgage call reports through NMLS. Mr. Simard admitted he had been late in his required filings under RSA 397-A:13 three or four times since 2006. Whistling Pines previously has been fined by the Department for such late filings. Ex. 7. Mr. Simard testified he had spoken with Ms. Nancy Burke, Department Licensing Supervisor, in the past regarding issues with using NMLS; however, he did not seek assistance with the subject 2019 financial statement filing.

RSA 397-A:13, II is clear, a financial statement shall be filed within 90 days from the date of the fiscal year end. Mr. Simard testified he was aware of and understood this requirement; and admitted Whistling Pines did not comply with this requirement for its 2019 financial statement. Mr. Simard's "good cause" for Whistling Pine's late filing is his inability to work through the NMLS system. However, Mr. Simard did not seek assistance from the Department for help with filing through NMLS for the subject financial statement. This fact, coupled with Mr. Simard's understanding of the law and previous late financial statements filings, does not present good cause sufficient to warrant a waiver of the \$1,150.00 fine. *See* RSA 397-A:22, V.

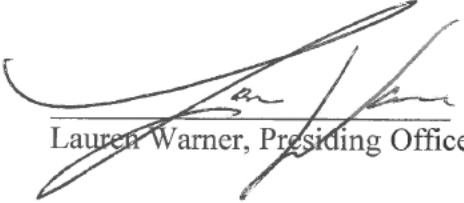
IV. Recommendation

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

1. Bank Commissioner deny Respondents' request for waiver of their \$1,150.00 fine for a late filed financial statement.

SO ORDERED.

Dated: 2/20/2020


Lauren Warner, Presiding Officer

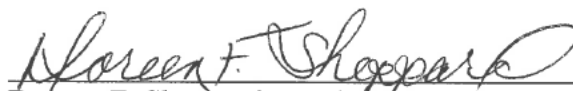
CERTIFICATE OF SERVICE

I, Doreen F. Sheppard, hereby certify that on February 20, 2020, a copy of the attached Notice of Hearing was sent to the following parties:

VIA E-MAIL AND US MAIL

Maryam Torben, Esq.
NH Banking Department
53 Regional Drive, Suite 200
Concord, NH 03301
Maryam.Torben@banking.nh.gov

Alan G. Simard
Whistling Pines Inc.
192 ByPass 28, #304
Derry, NH 03038
Asimard1@me.com



Doreen F. Sheppard, Paralegal II
New Hampshire Banking Department